

In the Supreme Court of the United States

OCTOBER TERM, 1996

AMCHEM PRODUCTS, INC., ET AL.,
Petitioners

v.

GEORGE WINDSOR, ET AL.,
Respondents

On Writ of Certiorari to the United States Court of
Appeals for the Third Circuit

JOINT APPENDIX - VOLUME II

JOHN D. ALDOCK
Shea & Gardner
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000

Counsel of Record for
Petitioners other than GAF
Building Materials, Inc.

ROBERT H. BORK
1150 17th Street, N.W.
Washington, D.C. 20036
(202) 862-5800

Counsel of Record
for Petitioner GAF Building
Materials, Inc.

BRAD SELIGMAN
1049 Key Route Boulevard
Albany, CA 94707
(510) 527-9385

Counsel of Record for
Respondents Aileen Cargile,
et al.

LAURENCE H. TRIBE
1575 Massachusetts Avenue
Cambridge, MA 02138
(617) 495-4621

Counsel of Record for
Respondents George Windsor,
et al.

BRIAN WOLFMAN
Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-1000

Counsel of Record for
Respondents White Lung
Association of New Jersey, et al.

(Additional Counsel Listed on Inside Cover)

22192

KENNETH S. GELLER
ANDREW J. PINCUS
CHARLES A. ROTHFELD
EILEEN PENNER
*Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 463-2000*
*Counsel for Petitioners
other than GAF Building
Materials, Inc. and
Armstrong World Industries, Inc.*

MAX GITTER
ALAN EFFRON
*Paul, Weiss, Rifkind,
Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000*
*Counsel for Petitioner GAF
Building Materials, Inc.*

ALAN B. MORRISON
*Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-1000*
*Counsel for Respondents White
Lung Association of New
Jersey, et al.*

JOCELYN D. LARKIN
DONNA M. RYU
*1049 Key Route Boulevard
Albany, CA 94707
(510) 527-9385*

STEVEN KAZAN
AARON SIMON
*Kazan, McClain, Edises,
Simon & Abrams
171 Twelfth Street, Third Floor
Oakland, CA 94607
(510) 465-7728*

*Counsel for Respondents
Aileen Cargile, Betty
Francom, John Wong,
John Soteriou, Harold
Hans Emmerich and
Thomas Corey*

FREDERICK M. BARON
BRENT M. ROSENTHAL
STEVE BAUGHMAN
*Baron & Budd, P.C.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219
(214) 521-3605*

*Counsel for Respondents
George Windsor, et al.*

TABLE OF CONTENTS

	Page
Class Action Complaint (January 15, 1993)	4
Defendants' Answer (January 15, 1993)	23
Joint Motion for Conditional Class Certification, Proposed Order, and Memorandum (January 15, 1993)	28
Stipulation of Settlement (January 15, 1993)	45
Response of CCR Defendants to the Order to Show Cause (excerpts) (March 17, 1993)	122
Memorandum of Class Representatives in Response to Rule to Show Cause (excerpts) (March 18, 1993)	126
Objection of CCR Defendants to Discovery Requests (April 26, 1993)	128
Objection of Class Representatives to Discovery Requests (April 28, 1993)	133
Affidavit of Thomas Kurt (excerpts) (July 21, 1993)	135
Declaration of Robert Fiore (July 26, 1993)	136
Declaration of Myles O'Malley (excerpt) (July 28, 1993) . .	138
Declaration of Katherine Kinsella (August 14, 1993)	140
Amendment to Stipulation of Settlement (September 24, 1993)	170
Memorandum Opinion on Subject Matter Jurisdiction (October 6, 1993)	183
Notice of Rule 23(b)(3) Class Certification for Settlement Purposes Only (October 27, 1993)	227

TABLE OF CONTENTS — Continued

	Page
Memorandum Opinion and Order Concerning Notice (October 27, 1993)	282
Settling Parties' Mid-Term Report on Implementation of Notice (December 6, 1993)	318
Transcript of Hearing Regarding Discovery (excerpts) (December 17, 1993)	326
Affidavits in Support of Motion to Certify California Mesothelioma Opt-Out Class (January 5, 1994)	329
Deposition of Anna Baumgartner (excerpts) (January 6, 1994)	353
Deposition of Timothy Murphy (excerpts) (January 6, 1994)	362
Deposition of Laverne Winbun (excerpts) (January 6, 1994)	367
Deposition of Carlos Raver (excerpts) (January 11, 1994)	370
Deposition of Nafssica Kekrides (excerpts) (January 12, 1994)	378
Deposition of Ambrose Vogt (excerpts) (January 12, 1994)	392
Deposition of James Crapo (excerpts) (January 13, 1994)	400
Deposition of Ty Annas (excerpts) (January 14, 1994)	415
Deposition of Lawrence Fitzpatrick (excerpts) (January 14, 1994)	424
Fitzpatrick Deposition Exhibit 5: A Critical Analysis of the Report of the Ad Hoc Committee on Asbestos Litigation (excerpts) (January 18, 1994)	430

TABLE OF CONTENTS — Continued

	Page
Deposition of Michael Rooney (excerpts) (January 18, 1994)	445
Deposition of Robert Georgine (excerpts) (January 27, 1994)	449
Order and Report by Special Master Burbank on Pennsylvania and South Carolina Cases (February 2, 1994)	452
Affidavit of Steven Kazan in Support of Cargile Reply Brief on Motion to Certify California Mesothelioma Opt-Out Class (February 4, 1994)	460
Affidavit of Larry Sartin (excerpts) (February 7, 1994)	471
Order and Report by Special Master Burbank on Illinois Cases (February 14, 1994)	473
Deposition of Lawrence Fitzpatrick (excerpts) (February 16, 1994)	482
Deposition of Katherine Kinsella (excerpts) (February 16, 1994)	484
Settling Parties' Final Report on Implementation of the Notice (February 16, 1994)	508
Order and Report by Special Master Burbank on New Jersey Cases (February 16, 1994)	525
Settling Parties' Exhibit SP-302A (February 22, 1994)	530
Settling Parties' Exhibit SP-302B (excerpts) (February 22, 1994)	537
Settling Parties' Exhibit SP-302C (excerpts) (February 22, 1994)	556
Settling Parties' Exhibit SP-303 (excerpts) (February 22, 1994)	560

TABLE OF CONTENTS — Continued

	Page
Settling Parties' Exhibit SP-502 (excerpts) (February 22, 1994)	562
Settling Parties' Exhibit SP-504 (excerpts) (February 22, 1994)	572
Settling Parties' Exhibit SP-509 (excerpts) (February 22, 1994)	581
Settling Parties' Exhibit SP-824 (February 22, 1994)	583
Testimony of Lawrence Fitzpatrick (excerpts) (February 22, 1994)	590
Testimony of Lawrence Fitzpatrick (excerpts) (February 23, 1994)	633
Testimony of Ambrose Vogt (excerpts) (February 24, 1994)	670
Testimony of Ty Annas (excerpts) (February 24, 1994)	681
Testimony of Geoffrey Hazard (excerpts) (February 25, 1994)	696
Testimony of Robert Georgine (excerpts) (February 28, 1994)	745
Testimony of Michael Rooney (excerpts) (February 28, 1994)	757
Testimony of Michael Rooney (excerpts) (March 1, 1994)	773
Deposition of Andrew Churg (excerpts) (March 3, 1994)	776
Testimony of Paul Epstein (excerpts) (March 8, 1994)	780
Testimony of Victor Roggli (excerpts) (March 8, 1994)	786

TABLE OF CONTENTS — Continued

	Page
Testimony of Victor Roggli (excerpts) (March 9, 1994)	787
Testimony of John Freeman (excerpts) (March 10, 1994)	811
Testimony of Christine Oliver (excerpts) (March 14, 1994)	830
Testimony of Robert Wages (excerpts) (March 16, 1994)	843
Testimony of Robert Hatten (excerpts) (March 17, 1994)	855
Testimony of Robert Hatten (excerpts) (March 18, 1994)	865
Plaintiffs' Response to MDL-875 Order to Show Cause (excerpt) (March 20, 1994)	871
Testimony of Samuel Dash (excerpts) (March 30, 1994)	880
Settling Parties' Proposed Conclusions of Law (excerpts) (May 16, 1994)	915
Back-End Opt-Out Delay Chart	917
Affidavit of Michael Ward (September 7, 1994)	918
Affidavits in Support of Cargile Memorandum in Opposition to CCR Motion for Preliminary Injunction (September 7, 1994)	921
Reply Memorandum of Third-Party Plaintiffs in Support of Motion for Summary Judgment (excerpts) (December 23, 1994)	924

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

**SETTLING PARTIES' MID-TERM REPORT
ON IMPLEMENTATION OF NOTICE**

In its opinion and order dated October 27, 1993, this Court directed that the settling parties file a mid-term report explaining the steps taken to that date to implement the notice plan approved by the Court. In particular, the Court's decision directed that the interim report set forth "(1) the number of individuals actually notified, (2) the categories of individuals notified, and (3) a description of precisely what efforts the various 'volunteer' organizations and persons have made to notify potential class members." Oct. 27 Dec. at 24-25.¹

The attached Declaration of Katherine Kinsella, the settling parties' notice consultant, explains in detail the steps that have been taken to date to implement the notice plan approved by the Court. Ms. Kinsella's Declaration shows that, to date, the notice plan has been implemented in accord with the Court's opinion, and that implementation of the plan is either on or ahead of the schedule proposed by the settling parties and approved by the Court. With respect to the specific questions raised by the Court, the answers are as follows.

1. Concerning efforts by unions and others to notify class members, Ms. Kinsella's Declaration explains that AFL-CIO President Lane Kirkland wrote to 48 AFL-CIO unions on October 29 to request their cooperation in the notice effort. Kinsella Decl.

¹ The Court's opinion defined such "volunteer" organizations as "unions, plaintiffs' attorneys, other organizations whose members may be in the class, and trade, industrial, and legal publications." October 27, 1993 Dec. at 24 n.25.

¶ 4. Ms. Kinsella's firm, The Kamber Group, began follow-up phone calls to these unions during the first week in November, and the court-approved letter (Exhibit P to the notice materials) asking that the unions cooperate in the notice effort was sent out shortly thereafter. *Id.* As a result of these efforts, 36 national or international unions have agreed to run some version of the court-approved "clip art" (Exhibit E to the notice materials) in union publications delivered individually to approximately 6 million union members and retirees during the notice and opt-out period, and 8 national or international unions have agreed to mail or to have mailed notice materials to almost 350,000 union members and retirees. *Id.* ¶ 5. All in all, then, these union efforts will result in notice materials being delivered individually through the mail to approximately 6.35 million union members and retirees.

In addition, as Ms. Kinsella's Declaration relates (¶ 7), several plaintiffs' attorneys have contacted her and asked that individual notice packets be sent to potential class members. To date, approximately 1,185 individual notice packets have or will be mailed out to potential class members whose names were obtained from plaintiffs' attorneys. *Id.*

Finally, 1,960 individual notice packets were provided in response to a request from the White Lung Association. Kinsella Decl. ¶ 10.

2. With respect to "categories of individuals notified," in addition to notice to union members and retirees, names from plaintiffs' attorneys, and the packets sent to the White Lung Association discussed above, various sets of notice materials have been mailed to 1) almost 21,000 plaintiffs (through their counsel) who have filed a claim against one or more CCR defendants since January 15, 1993; 2) over 1,000 plaintiffs attorneys who have, in the past twenty years, filed claims against one or more CCR defendants; 3) over 8,000 officials of national or international unions, at the national, state, or local levels; 4) 81 trade or other organizations, or trade, industrial or legal publications; 5) over 2,000 national radio stations and wire services, and print, radio, and televisions [sic] outlets; and 6) approximately 1,100 state and federal courts. Kinsella Decl. ¶¶ 3, 7, 9-10, 12-13.

3. Finally, with respect to the number of individuals notified to date, the mailings described above total notice to almost 6.375 million individuals. In addition, as of December 2, 1993, there have been 79,107 calls to the special 800-number, of which 68,409 calls were requests for notice packets, and 271 were requests for a copy of the Stipulation of Settlement. Kinsella Decl. ¶ 8. This means that, as of December 2, notice had been (or will shortly be) delivered to almost 6.45 million individuals.

In short, to date, the notice plan has been implemented entirely in accord with the Court's October 27, 1993 decision. The unions and others have been very responsive in helping to disseminate the notice, and the calls to the 800-number to date show that the media and other efforts are effectively reaching potential class members. Class counsel have also received over 1,000 calls. The notice campaign in this class action is living up to its promise to be the most extensive ever attempted. There is no need for this Court to alter or amend the notice plan in any respect.

Respectfully submitted,

Gene Locks
Greitzer and Locks
22d Floor
1500 Walnut Street
Philadelphia, PA 19102
(215) 893-0100

Ronald L. Motley
Joseph F. Rice
Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street
Suite 600
P.O. Box 1137
Charleston, SC 29402
(803) 666-7503

/s/ JOHN D. ALDOCK
Elizabeth Runyan Geise
Shea & Gardner
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036-1872
(202) 828-2000

John G. Gaul #34257
Center For Claims Resolution
116 Village Boulevard
Princeton, NJ 08540
(609) 520-6800

Of Counsel:
Lawrence Fitzpatrick
Center For Claims Resolution
116 Village Boulevard
Princeton, New Jersey 08540
(609) 520-6800

Attorneys for the Settling Parties

DATED: December 6, 1993

DECLARATION OF KATHERINE KINSELLA

1. My name is Katherine Kinsella. I am Senior Vice-President and Senior Consultant to The Kamber Group, the largest independently-owned communications company in Washington, D.C. I am responsible for the design and implementation of the notice to the class in *Carlough et al., v. Amchem Products, Inc. et al.*, C.A. 93-CV-0215 (E.D. Pa.). I submitted a Declaration to this Court on August 16, 1993, which described the notice plan proposed by the settling parties. In the October 27, 1993 decision and order largely approving this plan, the Court directed that the settling parties file an interim report — in the middle of the notice and opt-out period — describing implementation of the notice plan. Accordingly, the purpose of this Declaration is to describe, to date, the implementation of the notice. All facts stated in this Declaration are based upon my personal knowledge or information supplied to me by trusted subordinates in the regular course of business.

2. On November 1, 1993, the settling parties filed with the Court a set of final notice materials. For simplicity, the various notice materials will be described in this Declaration by their exhibit numbers in the November 1 filing. Moreover, the description of the implementation, to date, of the notice plan, will follow the same order as the description of the notice plan in my Declaration filed on August 16, 1993 with the settling parties' joint motion for approval of the notice.

Individual Notice

3. In Paragraph 21 of my August 1993 Declaration, I stated that complete individual notice packets, including the full Notice (Exhibit A), the Questions and Answers (Exhibit B), and an appropriate cover letter (Exhibit I), would be sent to counsel for all plaintiffs (or to the plaintiffs directly, if unrepresented by counsel) who have filed lawsuits against one or more CCR defendants from January 15, 1993 forward. Accordingly, on or about November 13, 1993, these notice packets were mailed to counsel for the almost 21,000 plaintiffs who have filed claims against one or more CCR defendants from January 15, 1993 through October 31, 1993. (None of these plaintiffs was not represented by counsel.) As the notice plan provides, the CCR will continue to update this list of

pending claims through January 10, 1994 — two weeks prior to the close of the opt-out period — and we will continue to send notice packets to any plaintiffs (or their counsel, if they are represented by counsel) whose names are generated in this manner.

4. Paragraph 22 of my August 1993 Declaration described the efforts that we would make to obtain help from the 56 national or international unions (listed in Exhibit O to my August 1993 Declaration) to provide notice to their current or retired members. These efforts were aided immeasurably by the commitment of the national AFL-CIO, in its September 24, 1993 *amicus* brief endorsing the settlement, to help in the notice campaign. Accordingly, on October 29, 1993, President Lane Kirkland of the AFL-CIO, wrote to the 48 AFL-CIO unions on the list in Exhibit O, urging each of them to cooperate in the notice effort. We began follow-up calls to all 56 unions listed in Exhibit O during the first week in November, and, shortly thereafter, sent out the letter to these unions prescribed in the notice plan (Exhibit P to the notice materials).

5. As of the date of this Declaration, 36 national or international unions have agreed to run some form of the "clip art" (Exhibit E to the notice materials) in the publications that they will mail during the notice and opt-out period to the homes of their members and retirees, and 8 have agreed to mail or to have mailed notice materials to current and retired members of their unions. Exhibit 1 to this Declaration sets forth the unions who have agreed to publish "clip art" in their individually-delivered publications, and the mailing dates and circulation figures for these publications. Exhibit 2, in turn, sets forth the unions who have agreed to mail or to have mailed notice materials to their members and retirees, and the number of these mailings. All in all, these union efforts will result in the "clip art" being run in publications that will be delivered individually to approximately 6 million union members and retirees, and the mailing of notice materials to almost 350,000 union members and retirees.

6. A few additional unions are still considering our request for help in the notice effort. And the letter to certain local unions (described in Paragraph 23 of my August 1993 Declaration) was mailed during the week of November 22 to 92 locals of the

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers.

7. Paragraph 24 of my August 1993 Declaration stated that an information and notification packet (consisting of Exhibits J, A, B, C, E, and F) would be mailed to the 1,000-plus attorneys who have represented plaintiffs who have filed claims against one or more CCR defendants. These mailings were sent out on or about November 13. Pursuant to the cover letter accompanying these packets (Exhibit J), several attorneys have contacted me and furnished me with the names and addresses of potential class members to be mailed complete individual notice packets (Exhibit I, A and B). To date, approximately 1,185 names and addresses have been furnished to me by plaintiffs' attorneys. We are in the process of mailing these packets to these names.

8. Paragraph 25 of my August 1993 Declaration explained that every notice document would refer potential class members to a special 1-800 telephone number, from which potential class members could obtain a complete individual notice packet (Exhibits I, A and B). The 800-number has been operational since November 5 (at least one week in advance of the first mailings under the notice plan). As of December 2, 1993, the 800-number has received 79,017 calls, of which 68,409 calls were requests for notice packets. We are in the process of mailing these notice packets to the callers who requested them. Copies of the Stipulation of Settlement also have been or will be sent to 271 callers to the 800-number who requested a copy of this document.

Notification Through Unions and Other Labor Bodies

9. Paragraphs 27 and 28 of my August 1993 Declaration described mailings that would be made (consisting of Exhibits K, A, B, C, E and F) to various officers in 56 national and international unions, in five trade and industrial departments of the AFL-CIO, the AFL-CIO State Federations, AFL-CIO Central Labor Councils, State Building Trades Councils, the Local Building Trades Councils, and over 6,000 local labor unions affiliated with

the 56 national or international unions listed in Exhibit P.¹ These mailings, which totaled over 8,000 packets, were sent out on or about November 13.

Notification Through Trade or Other Organizations and Through Trade, Industrial, and Legal Publications

10. Paragraphs 30 and 31 of my August 1993 Declaration described mailings that would be sent (consisting of Exhibits M, A, B, C, E and F) to 81 trade or other organizations, or trade, industrial or legal publications. These mailings were sent out on or about November 13. In addition, 1,960 individual notice packets were provided to the White Lung Association on or about November 17, 1993, in response to a request from that organization.

Notification Through Paid Media

11. Paragraphs 32-42 of my August 1993 Declaration described the paid television and print advertising components of the notice plan. Under the notice plan, a 30-second television ad (Exhibit D) will be run in 80 media markets during the week before the print advertising (Exhibit C) will be run in 292 newspapers (136 media markets). A second round of print advertising will be run two weeks later in 114 newspapers (59 media markets), and in *Parade* magazine. The television advertising was run throughout the week of November 29, and the first round of print advertising appeared in Sunday newspapers on December 5. The second round of print advertising and the advertisement in *Parade* magazine will run on December 19.

Public Service Media Strategy

12. Paragraph 43 of my August 1993 Declaration explained that a cover letter and press release or newscast script (Exhibits M and G) would be sent to all national radio stations and wire services, and to all major print, radio, and television outlets in the 136 media markets where paid print advertising will be run. These

¹ My August 1993 Declaration estimated the number of these local unions to be 10,000-15,000. This action number (obtained from the Department to Labor) is 6,403.

mailings, which totaled over 2,000 packets, were sent out on or about November 13.

Notification to State and Federal Courts

13. Finally, Paragraph 44 of my August 1993 Declaration states that complete information and notification packets (consisting of Exhibits N, A, B, C, E and F) would be sent to over 1,000 state and federal courts that have handled asbestos personal injury claims (either at trial or on appeal) against one or more CCR defendants. The mailings to these courts, which totaled approximately 1,100 packets, were sent out on or about November 13.

Timing

14. Paragraph 45 of my August 1993 Declaration set forth the schedule for the notice campaign. To date, the campaign is precisely on or ahead of the schedule set forth in Paragraph 45.

Miscellaneous Matters

15. I understand that the post office box obtained by the settling parties in the name of the Clerk of the Court, has been checked, since November 3, 1993, on a daily basis for Exclusion Requests, and that the settling parties have maintained a list and copies of all Exclusion Requests received.

Conclusion

16. In sum, I believe that implementation of the notice campaign in this class action is to date, in full compliance with the Court's October 27, 1993 decision and order, and that the notice effort is either on or ahead of the schedule that we proposed and the Court ordered.

* * * *

DATED: December 6, 1994 /s/ KATHERINE KINSELLA

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

TRANSCRIPT OF HEARING REGARDING DISCOVERY

* * * *

[Tr. 112] concerning the meetings that were had between class counsel and CCR. And in that respect, I think, to simplify it, one of the things we would like to have are the hourly records of class counsel that participated in this case so we can see when they met and under what circumstances and how much time they put into the settlement. And that's clearly an issue that goes to the adequacy of representation.

THE COURT: Well, the requests you've made in 4, 5, 6 and 7 are overly broad. Data is — generally data is somewhat relevant, but the detail is beyond what's useful to the Court or anybody in deciding whether they negotiated in good faith at arm's length and over a significant period of time and in a rigorous manner and so forth. I think that that's my view of it, on the other hand, some of this data seemed, as I mentioned, seemed to be relevant.

Mr. Aldock, is there anything that you can provide to show the length and breadth of the negotiations and some hard data that counsel can work with? You have made a proffer and I understand it.

MR. ALDOCK: I'm sure, we've made a proffer and we've made a proffer under oath. I will attempt to do something, your Honor, but —

THE COURT: I don't know how detailed it is. I don't know how detailed, I haven't read the —

MR. ALDOCK: Well, we'll attempt to respond to that

* * * *

[Tr. 129] that's fine.

THE COURT: No. 6?

MR. BARON: No. 6, did any such agreements exist.

THE COURT: There is one on the record in this case beyond the settlement agreement in this case?

MR. BARON: Right.

MR. ALDOCK: And the CCR? No. Settlement agreement is the only agreement.

MR. BARON: Okay. Then No. 4, I think —

THE COURT: 4, we've covered.

MR. BARON: Those we've covered and I think we're going to get.

THE COURT: Right.

MR. BARON: The California objectors want the — some specific date as to the — having a hard time this late in the day. Some specific information on the CCR filings and settlements and verdicts in the State of California. And—

THE COURT: I don't know that — I don't know what's relevant to these proceedings of that request.

MR. BARON: Once again, your Honor if the California people can show that people residing in California will normally in the average case receive substantially more in the tort system than they would under the Carlough settlement, it's very, very relevant as to fairness.

California has a very different system of laws in [Tr. 130] terms of contribution, in terms of all aspects of the case.

THE COURT: What about Alabama, Georgia, Florida?

MR. BARON: Your Honor, I believe those issues are relevant.

THE COURT: Well, my ruling is that all of No. 5 is irrelevant.

MR. BARON: Okay.

THE COURT: There's a lawyer that represents a lot of people out there, objectors, who may be here and I say respectfully that picking out the State of California has no relevance to this case in particular.

MR. BARON: Well, it does to California residents, your Honor.

THE COURT: Well, so does the — the cases everywhere.

MR. BARON: Well, there are, and, your Honor, that's the point of it, as we'll show the Court. If you reside in Massachusetts and you operate under the tort system, this settlement may be the greatest thing since sliced bread because in Massachusetts people don't receive any money and it takes them ten years to get anywhere. But in states like Texas and some of the other states where the docket delays are 12 months and people get large recoveries, this is an absolutely awful deal and that's why we want this information.

* * * *

**AFFIDAVITS IN SUPPORT OF MOTION TO
CERTIFY CALIFORNIA MESOTHELIOMA
OPT-OUT CLASS**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF BRAD SELIGMAN

I, Brad Seligman, declare:

1. I am special counsel for the moving parties. I have personal knowledge of the facts contained in this affidavit, and, if called as a witness, am competent to testify to those facts.

2. Since 1981, I have been associated with the Oakland law firm now known as Saperstein, Mayeda & Goldstein (formerly Saperstein, Seligman and Mayeda). From 1985 until September 1991 I was a partner in the firm (I was managing partner from 1988-91). Since September 1991, I have been of-counsel to the firm. Since joining that firm, my practice has been devoted to class action and individual civil rights litigation, with particular emphasis in the area of employment law. I have been lead or co-counsel in approximately 30 class actions including cases involving discrimination, privacy rights, disability rights, consumer and housing rights. The majority of these cases have been employment discrimination matters. The firm I have been associated with over the last 13 years has litigated more civil rights class cases than any other private firm in California.

3. I have been lead or co-counsel in the two largest class action sex discrimination settlements to date in the United States. I was co-counsel in the *Kraszewski v. State Farm* case, which settled for over \$200 million, and I am lead counsel in *Stender v. Lucky Stores*. The parties to that case just announced a \$107.25 million settlement, which awaits review by the United States District Court

for the Northern District of California. I have also been lead counsel in the largest class action polygraph testing (*Mest v. The Federated Group*) and psychological testing (*Soroka v. Dayton Hudson Co.*) cases to date. Both of these cases resulted in multi-million dollar state wide settlements.

4. I have lectured and written on class action, civil rights, and attorney fees matters. I have been an invited speaker on class action and civil rights issues by a wide variety of groups including the American Bar Association, the California State Bar and the San Francisco Labor and Employment Sections, the National Employment Lawyers Association, the Massachusetts Bar Association, the National Employment Lawyers Association and the California Employment Law Council. I have taught the class action portion of Stanford Law School's Complex Litigation class (Spring 1993) and have lectured on class action issues at Boalt Hall School of Law, Golden Gate University Law School and the University of San Francisco Law School.

5. I have been on the executive committee of the California State Bar Labor and Employment Section, and the Board of Directors of Equal Rights Advocates and California Rural Legal Assistance, Inc. I am currently on the Board of the Disability Rights Education and Defense Fund (DREDF) Development Partnership, and I am a litigation advisor to DREDF. I am the founder and executive director of The Impact Fund, a public foundation that supports class action public interest litigation through grants and technical support.

I swear under penalty of perjury that the foregoing is true and correct. This affidavit has been executed in Oakland, California.

DATED: Oakland, California
 December 15, 1993

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF DR. ALLAN H. SMITH

I, Dr. Allan Herries Smith, declare:

1. I have personal knowledge of the facts contained in this affidavit, and if called as a witness, am competent to testify to those facts.

2. I am a Professor of Occupational Health Epidemiology at the School of Public Health, University of California at Berkeley and have served in that capacity for the past ten years.

3. I received my Bachelor of Science at the Victoria University of Wellington, New Zealand with a major in mathematics. I then completed my degree in medicine at the University of Otago, New Zealand. That degree, the M.B., Ch.B., is the equivalent to a degree in medicine in the United States. Subsequently, I decided to specialize in epidemiology and I attended the University of Otago, New Zealand where I obtained a Ph.D in epidemiology in 1975.

4. I accepted a post-doctoral fellowship in Epidemiology at the University of North Carolina's School of Public Health in 1975 and was subsequently appointed to their faculty in 1976 where I served until 1978. I then returned to New Zealand to join the faculty in the Department of Community Health, Wellington Clinical School of Medicine, Wellington from 1978 until 1983. During the early 1980s I also held a number visiting academic appointments at the University of North Carolina, Chapel Hill, Victoria University of Wellington, and the International Agency for Research in Cancer in Kitakyushu, Japan. In 1983, I became a Professor of Occupational Health Epidemiology, School of Public Health at the

University of California at Berkeley and I have remained in that position through the present.

5. I belong to numerous professional associations including but not limited to the New Zealand Medical Association, the American Public Health Association, The Society for Occupational and Environmental Health, and the International Epidemiological Association.

6. I have over 100 publications in the epidemiological literature, including four publications on asbestos diseases.

7. I have reviewed a large part of the world's scientific literature on asbestos and disease and keep current on this literature.

8. I have conducted research into asbestos related cancers and have published articles on this research. I have also conducted research on reducing the risk of certain cancers in asbestos exposed workers, for example lung cancers for smokers through the introduction of carotene into the diet.

9. As a professor at Berkeley, I teach graduate students and conduct epidemiological research. Epidemiologists investigate the causes of disease in human populations and how to prevent them. One of the tools of epidemiology is risk analysis or risk assessment, which predicts the risk of getting diseases based on exposures to certain toxic materials. This involves the use of statistical analysis of populations.

10. I have recently attempted to formulate a prediction of the number of cases of mesothelioma which will occur in California's Bay Area over the next ten (10) years. In doing so, I have considered data generated by the SEER (Surveillance, Epidemiology, and End Results) Program of the National Cancer Institute, including the data published by Connelly, et al in "Demographic Patterns for Mesothelioma in the United States", Journal of the National Cancer Institute, vol. 78, No. 6, June 1987. I have also considered more recent data for the Bay Area obtained through the SEER program, which data has not yet been published. In formulating my projection of future mesothelioma cases in the Bay area, I have considered the trend of such cases over a twenty (20) year period.

11. In my opinion, mesothelioma cases will continue to occur in the Bay Area at a rate of approximately fifty (50) cases per year over the next ten years. I feel that this estimate is a conservative one, and that the actual number of cases which occur may well exceed this estimate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of December, 1993 in Oakland, California.

/s/ DR. ALLAN HERRIES SMITH

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF DR. REVELS CAYTON

I, Dr. Revels Cayton, declare:

1. I have personal knowledge of the facts contained in this affidavit, and, if called as a witness, am competent to testify to those facts.

2. I am a physician licensed to practice in the State of California since 1976. I practice medicine in Oakland, California and have hospital appointments at Summit Medical Center in Oakland, California. I am a member of the Board of Directors of the Hill Physicians Association, a consortium of physicians in the Oakland area who are part of area HMOs and PPOs.

3. I received my undergraduate training at the University of California at Berkeley. I attended medical school and obtained my medical degree in 1975 from Case Western Reserve school of Medicine in Cleveland, Ohio. I completed my internship in internal medicine at San Francisco General Hospital in Internal Medicine in 1976, and my junior and senior residency in Internal Medicine at the University of California Medical Center between 1976 and 1978. I then completed a two year fellowship in chest medicine at Highland General Hospital in Oakland, California. I have been in private practice since 1980.

4. I am board certified in both Internal Medicine and Pulmonary Disease. I received my board certification in Internal Medicine on January 2, 1979, and my board certification in pulmonary medicine on June 17, 1980.

5. Because of the proximity of the Bay Area of California to shipyards and other asbestos using industries I have seen examined and treated hundreds of patients with asbestos related diseases,

including mesothelioma, lung and other organ cancers, asbestosis, and pleural disease.

6. I have also served as an examining physician for the Department of Labor, and in that capacity I have examined many individuals with asbestos related diseases.

7. A considerable amount of my practice, in both a private capacity and as a medical examiner for the Department of Labor, has involved the diagnosis, evaluation and treatment of a large number of patients with mesothelioma. As a result of this aspect of my practice, and as a result of my formal training and education, I have gained knowledge and understanding of the nature of this disease, its cause, the manner in which it manifests itself, and its prognosis. I feel that I can competently testify as an expert in this area.

8. In the Bay Area, because of its shipyard and other industrial population, a disproportionate number of workers and their family members have contracted mesothelioma.

9. Mesothelioma is defined as a cancer which arises either in the pleura, the lining of the lung, or the peritoneum, the lining of the abdominal wall. It is a disease which is fatal, generally resulting in death within 12 to 18 months of diagnosis. Death is invariably accompanied by great pain and disability. There is no effective medical treatment or known cure.

10. The only established cause of mesothelioma is asbestos exposure. Where a diagnosis of mesothelioma has been made, and there is evidence that the patient has been exposed, asbestos will be found to be a cause of the illness. However, mesothelioma can result from very slight or incidental exposures to asbestos. For example, many cases of mesothelioma have been reported as occurring among individuals whose only known asbestos exposure arose from living in the same neighborhood as an asbestos mine or asbestos product manufacturing facility, or even in the same neighborhood as an asbestos consuming facility, such as a shipyard. Cases of mesothelioma are also relatively common among individuals whose only asbestos exposure results from household exposure to family members who are occupationally exposed and bring home asbestos on their clothing.

11. As is the case with all asbestos-related diseases, there is a latency period associated with the development of mesothelioma; that is, there is a significant period of time which commonly occurs between the patient's initial exposure to asbestos and the onset of mesothelioma. This period of time commonly ranges between 15 and 40 years, rarely shorter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of December, 1993 in Oakland, California.

/s/ DR. REVELS CAYTON

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF AILEEN CARGILE

I, Aileen Cargile, declare:

1. I have personal knowledge of the facts contained in this affidavit, and, if called as a witness, am competent to testify to these facts.
2. I live in Manteca, California.
3. I married Roy Cargile in 1942. From that time until 1993, my husband and I lived in the same home. From approximately 1961 to 1962, he worked as a machinery mechanic in an asbestos manufacturing plant in Stockton, California. My husband was occupationally exposed to asbestos during the course of his employment at the asbestos manufacturing facility. I handled and washed his work clothes, which were often dusty from his work at the plant.
4. My husband died of mesothelioma on August 6, 1993.
5. I have not yet filed a lawsuit against any asbestos defendants for the wrongful death of my husband.
6. I do not currently have any symptoms of an asbestos-related disease, nor have I been diagnosed with any such disease.
7. Because I do not know if I will develop an asbestos-related disease in the future as a result of my own exposure to asbestos, I have not filed a lawsuit against any asbestos defendant for my own injuries.
8. I would like to opt out of the CCR Settlement personally for any wrongful death action I may have for the death of my husband, and for any asbestos related disease I may contract in the future. I also seek to opt out of the CCR Settlement on behalf of all other

similarly situated putative class members I seek to represent through this motion.

I declare under penalty of perjury that the foregoing is true and correct. This affidavit has been executed in Manteca, California on this 3rd day of January, 1994.

/s/ AILEEN CARGILE

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF STEVEN KAZAN

I, Steven Kazan, declare:

1. I am attorney in good standing, admitted to practice law in the States of New York and California. I represent the moving parties in this Motion to Certify California Mesothelioma Opt-Out Class. I have personal knowledge of the facts set forth in this affidavit and, if called as a witness, am competent to testify to those facts.

2. I am the Senior Partner at Kazan, McClain, Edises & Simon in Oakland, California. For nearly twenty years, the firm has represented plaintiffs in cases involving catastrophic injury, including asbestos disease litigation, environmental and occupational exposures, defective products, and other personal injuries. For almost twenty years, our firm has specialized in representing plaintiffs who have contracted various asbestos diseases. We have focused more and more on mesothelioma cases over approximately the last ten years. The firm decided to develop this specialization because we believe it is important to try to provide the best representation possible to those individuals who suffer the most devastating effects of asbestos exposure.

3. I have personally tried dozens of civil jury cases to verdict during my career, and have argued dozens of appellate cases as well. My curriculum vitae, a copy of which is attached as Exhibit A, includes a partial list of these trials.

4. I have participated in a number of professional organizations, a list of which is included in my curriculum vitae. For example, I am a member of the Board of Governors, and past Vice-President (North) of the California Trial Lawyers Association. I am a past president and member of the Board of Governors of the Alameda/Contra Costa Trial Lawyers Association. Since 1976, I

have been a member of the Asbestos Litigation Group, a nationwide association of plaintiffs' attorneys who specialize in cases involving asbestos disease. I have lectured extensively on the subjects of toxic torts and mass tort litigation.

5. I have been involved with several major asbestos manufacturer bankruptcy cases over the past ten years. I was counsel to the one lay member of the Manville Asbestos Health Claimants Committee. I serve as a member of the Committee of Unsecured Creditors of H.K. Porter Company, Inc., *In re: H. K. Porter Co. Inc.*, Case No. 91-468 WWB, United States Bankruptcy Court for the Western District of Pennsylvania. I serve as an Advisor to the Amatex Victims Creditors' Trust and was a member of the Asbestos Health Claimant's Committee in *In re Amatex Corp.*, Bankruptcy #82-05220S, United States Bankruptcy Court for the Eastern District of Pennsylvania. I am counsel to one of the six members of the Official Asbestos Health Claimant's Committee, *In re: The Celotex Corp., et al.*, Consolidated Case Nos. 90-10016-8B1 and 90-10017-8B1, United States Bankruptcy Court for the Middle District of Florida. I am a member of the MDL 875 Plaintiffs' Steering Committee in this Court. Our firm is one of three class counsel firms for plaintiffs in *Ahearn, et al. v. Fibreboard Corp.*, Civil Action No. 6: 93 CV 526 in the United States District Court for the Eastern District of Texas, Tyler Division.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of January, 1994 at Oakland, California.

/s/ STEVEN KAZAN

[Jurat Omitted]

STEVEN KAZAN

171 Twelfth Street, Third Floor
Oakland, California 94607
Ph. (510) 830-2975
Fax. (510) 835-4913

EDUCATION:

- 1963 Brandeis University, A.B.
1966 Harvard Law School, LL.B.

BAR ADMISSIONS:

- 1967 Admitted to practice, New York State
1969 U.S. Court of Appeals, Ninth Circuit
1970 California and U.S. District Court, Northern District of California
1971 United States Supreme Court
1979 U.S. District Court, Eastern District of California

PROFESSIONAL EXPERIENCE:

- 1967-1969 Interstate Commerce Commission, Washington, D.C.
1969-1971 United States Department of Justice, Northern District of California Assistant United States Attorney
1971-1974 Werchick & Werchick, San Francisco, California - Trial Lawyer
1974-present Kazan, McClain, Edises & Simon, A Professional Law Corporation
Oakland, California
Founder, Senior Partner and President of the Board of Directors of an eleven attorney firm representing plaintiffs in cases involving catastrophic injury, including asbestos disease litigation, environmental and occupational

exposures, defective products, construction accidents, malpractice and personal injury.

- Approximately 50 civil jury trials to verdict.
- Member, Committee of Unsecured Creditors of H.K. Porter Company, Inc., *In re: H.K. Porter Co., Inc.*, Case No. 91-468 WWB, United States Bankruptcy Court for the Western District of Pennsylvania (1991-present).
- Member, Asbestos Health Claimant's Committee *In re: Amatex Corporation, formerly known as American Asbestos Textile Corp.*, Chapter 11, Bankruptcy #82-05220S, United States Bankruptcy Court, Eastern District of Pennsylvania (1982-1989).
- Advisor to Amatex Victims Creditors' Trust, *In re: Amatex Corporation, formerly known as American Asbestos Textile Corp.*, Chapter 11, Bankruptcy #82-05220S, United States Bankruptcy Court, Eastern District of Pennsylvania (1989-present)
- Member, Official Asbestos Health Claimant's Committee, *In re: The Celotex Corporation, et al., Debtors*, Chapter 11, Consolidated Cases Nos. 90-10016-8B1 and 90-10017-9B1, United States Bankruptcy Court, Middle District of Florida, Tampa Division (1991-present)
- Member, Plaintiffs' Steering Committee, Asbestos Multi District Litigation, *In re: Asbestos Products Liability Litigation*, MDL 875, United States District Court, Eastern District of Pennsylvania (1991-present)
- Alameda County Superior Court Plaintiffs' Asbestos Liaison Counsel (1979-present)
- Member, Alameda County Superior Court Civil Calendar Management Task Force (1988-present)

- Member, Alameda County Superior Court Trial Delay Reduction Act Committee (1989-present)

PUBLIC SERVICE

- 1977-1989 Human Utilization for Experimentation Committee, Peralta Hospital, Oakland, California.
- 1980-present Court Appointed Arbitrator, Alameda County Superior Court (Personal Injury Litigation)
- October 1985 "People Are Talking," KPIX Television, Asbestos Disease Issues.
- 1985-1992 Organizer/Chairperson, National Plaintiffs' Asbestos Litigation Annual Seminar, Monterey, California.
- August 1986 Editor, *"LIFE AFTER 51: The Trial Lawyers Guide to Joint & Several Liability in California"*, published by California Trial Lawyers Association.
- April 1987 "Newstalk with Quentin Kopp," KGO Radio.
- 1987-present Panelist, Early Disposition Program, Alameda County Superior Court.
- 1987-present California Trial Lawyers Association's WORKSAFE! representative.
- 1989 Conference Moderator, "Health & Safety for California Workers: Setting the Agenda for the 1990's," sponsored by WORKSAFE!
- 1989-present Arbitrator, Contra Costa County Superior Court: Special Mediator Program.
- 1989-present Panelist, Bench Bar Settlement Program, Contra Costa Superior Court.
- March 1990 "60 Minutes" Australia. "Dust to Dust." Discussed asbestos disease, U.S. Navy personnel & justice for Australian sailors.
- February 1990 "MacNeil/Lehrer Report," PBS Television. Discussed Johns-Manville bankruptcy and the rights of dying victims.

- 1990-present Settlement Commissioner, Special Settlement Mediator Program, Alameda County Superior Court
- 1976-present Lecturer, Moderator and Panel Member in various programs for California Trial Lawyers Association & Asbestos Litigation Group including:
- 1976 CTLA Annual Convention Speaker, "Federal Tort Claims"
 - 1982 CTLA Annual Tahoe Seminar Speaker, "Asbestosis"
 - 1985 CTLA Annual Convention Moderator, "Environmental & Toxic Torts"
 - 1986 CTLA Annual Convention Speaker, Prop. 51 Aftermath, "Retroactive Applicability"
 - 1986 CTLA Annual Tahoe Seminar Workshop Leader, "Mass Tort Litigation"
 - 1987 CTLA Annual Convention Moderator, "Personal Injury/Workers' Compensation Interface"
 - 1988 CTLA Annual Convention Speaker, Toxic and Mass Tort Litigation, "Toxic Exposure: Elements of a Successful Case"
 - 1988 CTLA Annual Tahoe Seminar Speaker, Prop. 51 Aftermath, "Interpretation and Application"
 - 1989 Advocacy College Lecturer, "Cross Examination"
 - 1989 CTLA Annual Convention Moderator, "Toxic Torts" The Changing Environment"
 - 1990 CTLA Annual Convention Moderator, "How to Successfully Practice Personal Injury in 1990s"

- 1991 CTLA Annual Convention Speaker, "Ergonomics in the Work Place - Repetitive Strain Injuries"
- 1992-1993 Asbestos Litigation Group Moderator - Discussions regarding *Carlough*, Center for Claims Resolution Class Action Settlement

PROFESSIONAL ORGANIZATIONS:

- Alameda County Bar Association (1974-present)
- State Bar of California (1971-present)
- State Bar of New York (1967-present)
- New York State Trial Lawyers Association (1975-present)
- Federal Bar Association (1969-present)
- Association of Trial Lawyers of America (1977-present)
- California Trial Lawyers Association (1971-present)
 - Board of Governors (1980-present)
 - Parliamentarian (1989)
 - Vice President, North (1990)
- Asbestos Litigation Group (1976-present)
- Alameda/Contra Costa Trial Lawyers Association (1974-present)
 - Member Board of Governors (1975-1983)
 - President (1980)

PUBLISHED OPINIONS RESULTING FROM SOME OF THE FIRM'S CASES:

- Cretan v. Director, OWCP*, 93 C.D.O.S. 5687 (9th Cir. 1993)
- Force v. Director, OWCP*, 938 F.2d 981 (9th Cir. 1991)
- General Ship Service v. Director, OWCP*, 938 F.2d 960 (9th Cir. 1991)
- Jackson v. Kaiser Aluminum & Chemical Corporation*, 24 BRBS 469 (ALJ) (1991)

- Cretan v. Bethlehem Steel Corporation and Director, OWCP* 24 BRBS 35 (1990)
- Elfreda Martin v. Kaiser Co., Inc. and SAIF Corp.*, 24 BRBS 112 (1990)
- Jackson v. Deft, Inc.*, 223 Cal.App.3d 1305 (1990)
- Lucero v. Kaiser Aluminum and Chemical Corp. and Associated Indemnity/Fireman's Fund*, 23 BRBS 261 (1990)
- Ponder v. Peter Kiewit Sons' Co. and Aetna Casualty & Surety Co.*, 24 BRBS 46 (1990)
- Steele v. Chevron, Inc.*, 219 Cal.App.3d 1265 (1990)
- Force v. Kaiser Aluminum and Chemical Corp. and Fireman's Fund Insurance Co.*, 23 BRBS 1 (1989)
- Jones v. U.S. Steel Corp.*, 22 BRBS 229 (1989)
- Lustig v. Todd Shipyards Corp.*, 20 BRBS 207 (1988), aff'd 881 F.2d 593 (9th Cir. 1989)
- Madden v. Western Asbestos Co. and State Compensation Insurance Fund*, 23 BRBS 55 (1989)
- Arganbright v. Marin Ship Corp. and State Compensation Insurance Fund*, 18 BRBS 281 (1986)
- General Foundry Service v. WCAB (Jackson)*, 42 Cal.3d 331 (1986)
- Berkebile v. Johns-Manville Corp.*, 144 Cal.App.3d 940 (1983)
- William Henderson Smith v. Johns-Manville Corp.*, 45 CCC 557 (1981)
- Baptist v. Johns-Manville Corp.*, 137 Cal.App.3d 903 (1980)
- Johns-Manville Products Corp. v. Superior Court of Contra Costa County (Rudkin)*, 27 Cal.3d 465 (1980)

REPRESENTATIVE TRIALS:

Speake v. Johns-Manville Corp. - \$150,000 verdict for mild asbestosis, February 1982; First Johns-Manville factory worker verdict in U.S. The lead case for 200 other cases, followed within months by the Johns-Manville bankruptcy petition.

Bell v. Fibreboard Corp. - \$2,700,000 verdict, August 1983; First punitive damage verdict in the United States against Fibreboard Corp.

Cardia v. Plant Insulation Co., et al. - \$5,093,351 verdict on April 12, 1991, on behalf of a 56 year old self-employed plumbing contractor suffering from mesothelioma.

Garvis v. General Dynamics, et al. - \$2,437,500 verdict rendered December 11, 1991 on behalf of a 48 year old man suffering from mesothelioma following exposure during childhood to his father's clothes which had asbestos fibers remaining from his work at a Sacramento railroad; Mr. Garvis was also exposed to asbestos while serving aboard the U.S.S. Skipjack, a nuclear attack submarine.

Morton v. Owens-Corning Fiberglas, et al. - \$3,484,170 verdict rendered on December 23, 1992 on behalf of a 52 year old man with mesothelioma who had one year's exposure to asbestos products as a wire puller during construction of the U.S.S. Kitty-Hawk at New York Shipbuilding, Camden, New Jersey.

Bertillo v. Pittsburgh Corning Corp., et al. - \$3,877,022 verdict (including \$1,900,000 loss of consortium) on March 3, 1993 on behalf of 69 year old man who developed mesothelioma following exposure at Moore Dry Dock and Alameda Naval Air Station.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF BETTY FRANCOM

I, Betty Francom, declare:

1. I have personal knowledge of the facts contained in this affidavit, and, if called as a witness, am competent to testify to those facts.

2. I live in Napa, California.

3. I married Allen Francom in 1950. From 1950 until his death in 1991, we lived in the same home. From approximately 1958 to 1979, my husband worked at Mare Island Naval Shipyard in Vallejo, California as a laborer, pipefitter helper, boilermaker helper, ship file clerk, and inspector. From approximately 1955 to 1961, he worked at Kaiser Steel's Napa facility as a boilermaker and pipe welder. My husband was occupationally exposed to asbestos during the course of his employment at both Mare Island and Kaiser Steel. During the years he worked at Mare Island and Kaiser Steel, I often did the laundry for our household, which included washing my husband's work clothes.

4. My husband died of mesothelioma on April 17, 1991.

5. I do not currently have any symptoms of an asbestos-related disease, nor have I been diagnosed with any such disease.

6. Because I do not know if I will develop an asbestos-related disease in the future as a result of my own exposure to asbestos, I have not filed a lawsuit against any asbestos defendant for my own injuries.

7. I would like to opt out of the CCR Settlement personally, as well as on behalf of all similarly situated putative class members I seek to represent through this motion.

I declare under penalty of perjury that the foregoing is true and correct. This affidavit has been executed in Napa, California on this 29th day of December, 1993.

/s/ BETTY FRANCOM

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF JOHN WONG

I, JOHN WONG, DECLARE:

1. I have personal knowledge of the facts contained in this affidavit, and, if called as a witness, am competent to testify to these facts.

2. I live in Oakland, California.

3. I have worked in the construction trades for the past fifty years. From the late 1940s until the late 1980s, I worked as a construction engineer for The Calmar Company. I believe I was occupationally exposed to asbestos in these various jobs.

4. I do not have any symptoms of an asbestos-related disease, nor have I been diagnosed with any such disease.

5. Because I do not know if I will develop an asbestos-related disease in the future as a result of my exposure to asbestos, I have not filed a personal injury lawsuit against any asbestos defendant.

6. I would like to opt out of the CCR Settlement personally, as well as on behalf of all similarly situated putative class members I seek to represent through this motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of December, 1993 at Oakland, California.

/s/ JOHN B. WONG

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT AND OATH OF AARON SIMON

I, Aaron Simon, declare:

1. I have personal knowledge of the facts contained in this affidavit, and, if called as a witness, am competent to testify to these facts.

2. Since 1990, I have been a partner in Kazan, McClain, Edises and Simon, an Oakland, California law firm which specializes in representing plaintiffs in catastrophic injury cases, including asbestos disease litigation. Prior to 1990, I was a partner in the Los Angeles firm of Greene, Broillet, Paul, Simon & Wheeler, where I represented numerous asbestos claimants in civil actions over a twelve year period.

3. Although the language of California Code of Civil Procedure § 36(d) is discretionary, it is my experience that courts grant Section 36(d) motions as a matter of right. In both Los Angeles County and Alameda County courts, my respective offices have filed more than 50 Section 36(d) motions. Although routinely opposed by defense counsel, all of these motions have been granted. I do not know of a single instance in which a California practitioner has filed an unsuccessful motion for a trial date priority under California Code of Civil Procedure § 36(d).

4. I supervised the review and compilation of all verdicts reported in the verdict summary section of *Mealey's Litigation Reports/Asbestos* from Volume 6, No. 23 (January 1, 1992) through Volume 8, No. 18 (October 15, 1993), inclusive. Based on this information, and excluding all zero dollar recoveries, the average verdict for California mesothelioma plaintiffs was \$2,790,986. The average verdict for mesothelioma plaintiffs in all other states combined was \$1,825,303. Thus, the average

California mesothelioma verdict was 53% higher than that of the other states.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of January, 1994 at Oakland, California.

/s/ AARON SIMON

[Jurat Omitted]

DEPOSITION OF ANNA BAUMGARTNER

* * * *

[Tr. 30] A. I believe I did, yes.

Q. When?

A. Maybe four, five, six, seven months ago. I'm not absolutely sure.

Q. Were you ever told that the case that you filed in Philadelphia had been settled?

A. The case in Philadelphia had been settled?

Q. Yes.

A. Do you mean the class action?

Q. Yes.

A. No.

Q. As far as you know today, the class action has not been settled?

A. No.

Q. Is that right?

A. As far as I know.

Q. Do you ever watch TV?

A. Uh-huh.

Q. A lot?

A. No, not too much.

Q. Have you ever seen anything on television about your case in Philadelphia?

[Tr. 31] A. No, but my brother seen something a few weeks ago, I believe, and he was talking to me about it. There was a 911 number if you had asbestos cases.

Q. Did you call the number?

A. No.

Q. Did your brother?

A. Not that I know of.

Q. But you didn't see anything?

A. No.

Q. Did you read anything about the case in the newspaper?

A. Yes. I seen a small article.

Q. What did it say?

A. To my recollection, is if you were involved in asbestos or thought you had some type of suit, that call this — you know, you could call this number and get additional information.

Q. Did you call the number?

A. No.

Q. Why not?

A. I didn't feel like I had any need to.

Q. Have your lawyers told you when [Tr. 32] they think that the suit in Philadelphia might be settled?

A. No.

Q. Have the lawyers told you how much they think that you might receive from the suit in Philadelphia?

A. Yes.

Q. How much might you receive?

A. If I recall, when Mr. Nolan talked to me and my husband last year, it was a range of like 20,000 to possibly 300,000 if there was an extraordinary claim.

Q. Do you think you have an extraordinary claim?

A. Possible.

Q. Did your husband ever discuss with you prior to his death the case that was pending in Philadelphia?

A. You are talking about the class action?

Q. Yes.

A. Yes.

Q. What did he tell you about it?

A. He felt like it was a good idea because he believed that at least the sicker [Tr. 33] people, and all people, could at least receive

their money sooner and not be caught up in the systems that last five, six, seven, eight years, and that the money could reach the people, and because the lawyers — he didn't like the idea of that, and litigation, and he thought that was a waste of money, and he liked the system about the class action.

Q. Did he think that it was important to be sure that the money went to the sickest people and not to the people that weren't very sick?

A. He believed that anyone that was suffering from it — from an illness, that was really ill from it.

Q. When you say really ill —

MR. LOCKS: Did you finish your answer?

THE WITNESS: I thought I did.

BY MR. BARON:

Q. I thought you did too. What did you mean by really ill?

A. I don't know what he meant by that.

Q. Let me ask you how you feel [Tr. 34] about it. Who should receive the money? Which types of people should receive money?

A. People that are out of work that no longer can work. That probably would be a good issue, I would think.

Q. So would it be fair to say that you believe the right way to handle this case is to give money to those people who are out of work and can't work, but not to the people who are still working?

MS. WHITE: Objection. You mischaracterized her answer.

BY MR. BARON:

Q. Is that right? Or have I missed something?

MS. WHITE: You asked her a priority question.

MR. BARON: Let her answer the question, for God's sake.

MR. McCONNELL: Wait a minute, Fred. You are not going to whistle at counsel. That doesn't appear on the record. Let her state her objection, and let's move on.

MR. BARON: That would be nice.

* * * *

[Tr. 50] A. I don't think so.

Q. Do you think that people who have pleural thickening should receive money from the asbestos companies?

A. If they are suffering from the illness or they are not suffering from the illness?

Q. What do you mean by "suffer"?

A. You are having pleural thickening — they have pleural thickening; do you think they should be compensated if they have an illness from it, or they just have pleural thickening?

Q. If they just have pleural thickening but they are not disabled in any way or impaired.

A. No.

Q. Why not?

A. Because I don't think they should. I think they are not suffering from that yet.

Q. Have you talked to anyone that has non-suffering pleural disease?

A. No.

Q. So you've never inquired how

* * * *

[Tr. 52] file the suit or not, in your mind.

A. File a lawsuit or file under CCR or —

Q. File a lawsuit.

Should they be entitled to make that decision themselves?

A. To file for compensation? Is that what you are saying to me?

Q. Yes. As a lawsuit.

Do you understand my question?

A. No.

Q. Let me try it again.

A. Okay.

Q. Let's say we've got an individual who doesn't see the ad in the newspaper and doesn't see anything on television about this case.

Okay?

A. Uh-huh.

Q. And let's say five years from now that person develops pleural thickening that does not cause any disability.

A. Uh-huh.

Q. Based on your own thoughts, do you think that person should have the right to [Tr. 53] make his or her own decision as to whether to make a claim against CCR under the class, or to file a lawsuit?

A. If they have pleural thickening and have no disability and they are asking for compensation, no.

Q. You do not believe they should file a lawsuit?

A. I don't believe they should be compensated by anyone.

MR. BARON: That's all I wanted to know. Thank you. That's all I've got.

MR. PYLE: I don't have any questions.

* * * *

[Tr. 68] Would you like to take a break?

THE WITNESS: No. Okay. I get upset when I see something like that.

No. To my knowledge, nothing was talked about a class action at that meeting.

BY MR. BARON:

Q. When do you recall the first time that something was talked about a class action? Was it after his death?

A. No, it was about October.

Q. About a month after this?

A. Uh-huh.

Q. Who talked to you about it?

A. Mr. Nolan talked to us in the office with me and my husband.

Q. Did he tell you in October that the class action had already been settled?

A. No.

Q. When did you learn that the class action had been settled?

A. I never knew it was settled.

Q. Up until the last couple of days?

A. I never knew it was settled.

[Tr. 69] Q. Have you read the Stipulation of Settlement in this case? A big thick document?

A. Which paper are you talking about?

MR. BARON: Why couldn't you just show it to her?

THE WITNESS: (Looking at document.) Yes.

BY MR. BARON:

Q. You've read through that document?

A. Yes.

Q. Did you understand it?

A. I may not have understood every word of it, but my husband read it and I read it and pretty well understood what it meant.

Q. When you went through it with your husband, were you and your husband satisfied that it was a good settlement?

A. Yes.

Q. Would it be fair to say that even if the class action doesn't go forward, you want to go forward with the settlement for yourself?

A. Get this settled?

[Tr. 70] Q. Let me try it again.

Under this document, do you understand that you may receive some money for your case?

A. Yes.

Q. And is the money that you expect to receive under this document satisfactory with you?

A. You are talking about the figures here?

Q. Yes.

A. Yes.

Q. If the Court does not approve this settlement, but CCR offers you the settlement anyway, would you be willing to accept it?

A. If the Court doesn't approve this, how is CCR going to offer me anything?

I don't understand what you are saying to me.

Q. Are you aware that CCR has made an offer to settle all of the Greitzer & Locks cases, both past and future, on the terms of that settlement?

MR. LOCKS: Objection.

* * * *

[Tr. 85] MR. WEINGARTEN: You asked all —

THE WITNESS: He asked me a lot of different questions.

MR. WEINGARTEN: One of the things you had done earlier, you asked it in the context of comparing it with mesothelioma.

Now I think you've taken out that comparative nature of the question, so it's a very different question that you are asking now, as I understand it.

MR. BARON: Let's stop.

(Off the record.)

MR. BARON: I would like to see if we can finish this very quickly. I'm sure that you would too.

BY MR. BARON:

Q. I went back through the transcript, and the last series of questions that I asked you were about the individual who has non-disabling pleural disease who has not lost any work, who is able to function on a [Tr. 86] daily basis.

I asked you a series of questions and your last answer is "I don't believe they should be compensated by anyone."

That's a precise recital of your answer.

Do you remember that?

A. Yes.

Q. Is the reason that you think that those people should not be compensated by anyone is that there is not enough money to go around?

A. No.

Q. What is the reason you think that people with pleural thickening, that is not disabling, should not be compensated?

A. I don't feel as though they are suffering from the disease. That is the best way I can put it in a generalized statement.

Q. Have you ever met anyone who has pleural thickening and no other asbestos-related problems?

A. I answered that question before.

Q. What was the answer?

A. I answered that question before.

* * * *

[Tr. 93] share of a range between 20 to 300 thousand was fair, did you give any thought at all to what would be a fair figure for the rest of the defendants in this case?

A. Yes.

Q. And what would that figure be, ma'am? What is that figure?

A. I don't know the exact figures, but I was shown this paper, and I thought it was fair.

Q. When I say the other defendants, I mean the other defendants in your case, the non-CCR defendants who haven't paid you or haven't offered you any money yet.

Do you have any thought about what you would believe to be a fair and reasonable amount of money to settle your claims against the other defendants?

A. No, I don't.

Q. When you made the decision that the amount of money that CCR was offering you was fair and reasonable, did you have anything to compare that offer with?

A. No.

Q. How was it that you arrived at [Tr. 94] the decision that the CCR defendants' share was fair and reasonable in the amount that they are offering?

A. My husband felt, and I did too, that the money was fair to all the people, and that the cost of lawyers' fees and litigations, and people waiting five and ten and fifteen years to hear their cases was part of the issue, and perhaps the money would at least reach the sicker people and allow them to have some quality of life while they were still alive instead of waiting five and ten years.

Q. Now, ma'am, as I understand it, you have actually gotten a settlement in this case from a defendant that is not a CCR defendant; is that right?

A. Yes.

Q. And you indicated that was Babcock & Wilcox; is that right?

A. Yes.

Q. And that was in the traditional tort system; is that correct? That was not in a class action, was it?

A. No.

* * * *

DEPOSITION OF TIMOTHY MURPHY

* * * *

[Tr. 43] A. Just normal wear and tear as you get older.

Q. But you haven't seen anything special in terms of your lung problems; right?

A. Not that I know of, no.

Q. Do you have any reason to believe, as we sit here today, that you have been harmed by asbestos?

A. I'm sure that there has been some damage.

Q. How do you know that?

A. Well, just because I've been exposed for so long that I'm sure that just from information that I've read concerning the potential hazards.

Q. In your mind, anyone that has been exposed has got a potential hazard?

A. Right.

Q. Do you know how long it takes, in terms of exposure time, for you to start having problems?

A. I'm not sure exactly, no.

Q. Any idea of what the ballpark is?

A. Well, what do you mean by that?

* * * *

[Tr. 56] Do you watch television very often?

A. As much as everybody else.

Q. Have you ever seen anything on television about this lawsuit?

A. No.

Q. Do you read the newspapers every once in a while?

A. Every day.

Q. Have you ever seen anything in the newspapers about this lawsuit?

A. I didn't see it.

Q. You have friends that are in the union; have you ever heard tell from any of your friends in the union that they saw something on TV about this lawsuit?

A. I heard somebody on the job site talk about it.

Q. What did he say?

A. Said he saw something about it in the paper. That was about it.

Q. Did he say that people needed to call the District Clerk's Office to get a package?

A. No.

* * * *

[Tr. 108] Q. Would it be fair to say that your primary concern about asbestos-related disease is that you might get it in the future?

A. That's my concern.

Q. Are you concerned about the ability of the asbestos companies to pay you damages sometime in the future?

A. Yes.

Q. Do you have a pretty substantial concern about that?

A. I realize a lot of them are going bankrupt.

Q. So your interest is in being sure that those companies are still able to pay you ten or fifteen years from now if you develop disease; right?

A. Right.

Q. What do you think you can do to guarantee that those companies will be around ten or fifteen years from now to pay you?

MS. WHITE: Objection.

THE WITNESS: What do I think I can do?

[Tr. 109] BY MR. BARON:

Q. Yes.

A. I don't think I can do anything.

Q. Would it be fair to say that you understand that if a lot of people file claims now and receive money for those claims, the

ability of the companies to pay you ten or fifteen years from now will be less?

A. Do I understand that?

Q. Yes. Is that what you believe?

A. What I believe is that hopefully that this class action suit will set back money so in case people like myself develop mesothelioma, there will be money set aside for me.

Q. So your interest is in being sure that there will be money set aside?

A. And that it's done at a fairly swift manner.

Q. Okay. Would it also —

MR. LOCKS: Excuse me. Did you finish your answer? Every time he says okay —

THE WITNESS: A swift manner and fair.

* * * *

[Tr. 112] what's going to happen as a result of this settlement?

A. I have no idea.

Q. You've not looked into that issue?

A. I know that according to the facts that I have, that it's, with this settlement, with this class action suit, that it will free money — that there will be money and it will be quicker and a fair — on average, fair.

Q. Do you know where that money will be freed up from?

A. I have no idea.

Q. So you don't know whether it's coming out of the pockets of other asbestos victims, do you?

MS. WHITE: Objection.

THE WITNESS: I assume not.

BY MR. BARON:

Q. If it could be shown to you that a large percentage of people who are presently receiving benefits will not receive benefits so that claims in the future could be paid, would you think that's fair?

* * * *

[Tr. 117] Q. Mr. Murphy, my name is Brian Wolfman. I represent some of the other objectors in this case.

If you don't understand a question, just ask me to repeat it or to recharacterize it in some way. There has been a lot of talk about whether you saw the settlement, when you saw it.

I just want to ask you a basic question:

As far as you can tell, as far as you learned by reading it or talking to others, and use as much time as you need, describe to me the terms of this settlement.

A. The way I understand the settlement to be is that it will provide money — not money, but an opportunity for people like me who have been exposed occupationally [Tr. 118] over the years. If we get sick, we will be able to go through, bypass the majority of the court system, and get a fair settlement involving these companies, these twenty companies.

Q. Are you aware of the various amounts that you would get depending upon what disease —

A. Right.

Q. Are you aware of that?

A. Yes. And I understand that to be based on an average, averages of settlements over the last few years.

Q. Are you married?

A. Yes.

Q. Did you discuss this lawsuit with your wife?

A. Yeah.

Q. Do you know, to your knowledge, if your wife had any discussions with any of the attorneys that you had discussions with?

A. Not — no, I don't think she did.

Q. To your knowledge, is your wife aware that she's a representative plaintiff?

* * * *

[Tr. 137] that the amounts of money that CCR paid in lung cancer cases was a lot more than what you were agreeing to, there would

be other factors that you would have to take into account before you would determine whether it was fair or not fair?

A. Right. There would be other factors involved.

Q. The other asbestos workers that you have spoken to — I'm sorry. Since you've become a class representative, have you spoken to other asbestos workers?

A. Yes.

Q. And you've told them about your position in this thing; is that right?

A. Right.

Q. Have you advised any of those people that they have the right to opt out of this settlement?

A. I've explained to them how it works. We've got — our international journal came out with an article telling how to do it.

MR. ROSENBERG: Does anybody else have any questions?

Mr. Murphy, thank you very much.

DEPOSITION OF LAVERNE WINBUN

* * * *

[Tr. 10] Q. When did Mr. Winbun pass away?

A. In November of 1991.

Q. What did he die from?

A. Mesothelioma.

Q. How did you learn that he had died from mesothelioma?

A. Well, we requested a — what do you call it?

Q. An autopsy?

A. An autopsy.

Q. Had you known before he died that he had mesothelioma?

A. No, we didn't.

Q. So up until he died and the autopsy came forward, you had no idea what killed him?

A. Well, we knew he had cancer. We knew he had lung cancer, but we didn't know what type.

Q. How did you know that he had lung cancer.

A. Well, because the doctors told him.

* * * *

[Tr. 12] Q. Was that before he developed lung cancer?

A. No. He already knew he had the cancer.

Q. So after he was diagnosed with lung cancer, somebody told him that he had asbestosis?

A. Yeah. It was — yeah.

Q. Who was that?

Do you remember what doctor that was?

A. Dr. Boatrite, I think.

Q. Okay, Dr. Boatrite.

Did he tell you before he died —

A. No, no. We got it from — when Dr. Boatrite — every once in a while we would have to have a verification that he needed the oxygen, and the place where we got the oxygen they was supposed to send them a letter. Well, by mistake they sent the letter to us, and that's how come we found out that he had the asbestosis in his lungs, but I don't think that even then that my husband realized about it.

Q. So up to his death, as far as [Tr. 13] you are concerned, he never really understood that he had an asbestos-related disease; is that right?

A. I don't think so.

Q. Did you ever discuss with him the fact that he had worked around asbestos?

A. No, we never talked about it.

Q. So to your knowledge, as long as he was alive, you never knew that he worked with asbestos; right?

A. I never heard anything about — anything about asbestos.

Q. Now, when he died, did you seek legal advice?

A. Not right away.

Q. Did he seek legal advice during his lifetime for an asbestos-related injury?

A. No, but he did go and have some breathing tests where some lawyers — it was — they were — I think had been railroad lawyers.

Q. Railroad lawyers?

A. Yeah, at one time. And all the men were having these tests made on their hearing. They was having tests made on their hearing.

* * * *

[Tr. 39] Q. Have you seen this case on television?

A. No.

MR. WEINGARTEN: You mean the advertisements?

MR. BARON: Yes.

BY MR. BARON:

Q. You've not?

A. No.

Q. Do you watch television very often?

A. Not very often.

Q. Have you seen anything about this case in the newspapers?

A. No.

Q. When I say "anything about this case," let's be more specific.

Allegedly there was a notice that was published in certain newspapers about this class action.

Do you have any recollection of [Tr. 40] ever seeing that?

A. No.

Q. And allegedly there were television promotions describing this class action.

Do you recall ever having seen any of those?

A. No.

Q. Do you recall ever receiving information from anybody about how to opt out or get out of this case?

A. No.

Q. Do you ever read the newspaper?

A. Not very often. I don't take the newspaper.

Q. Was your husband a member of a union?

A. Yes, he was.

Q. Which union?

A. Well, I don't know what union it was. It was a railroad union.

Q. Did that union ever notify you about this class action?

A. No.

* * * *

DEPOSITION OF CARLOS RAVER

* * * *

[Tr. 15] Q. When did they start doing that?

A. That was just about the same time, sir, the early '70s.

Q. So since the early '70s, about once a year they have you take an x-ray and a breathing test?

A. Yes, sir.

Q. Do you understand why you have to do that?

A. They want to monitor you.

Q. For what?

A. See if any changes.

Q. Have you, yourself, had to pay for those x-rays and breathing tests, or does the company pay for them?

A. The company pays for them, sir.

Q. As of today, have you yourself spent any money out of pocket for x-rays or breathing tests or anything else to see if you have asbestos disease?

A. No, sir.

* * * *

[Tr. 20] Q. Was I incorrect in my statement there?

Did you understand about the hazards of asbestos before the doctor told you something?

A. No, sir.

Q. So when the doctor told you that there was something in your lungs, that was your first notice that asbestos could be a problem for you; is that right?

MS. WHITE: Objection. A problem, or a problem for him?

MR. BARON: For him. That's what I said.

THE WITNESS: That was the first I knew that I had a problem, sir.

BY MR. BARON:

Q. Before the doctor said anything to you, did you have any inkling or knowledge that asbestos could be a problem for you?

A. No, sir.

Q. You just never thought about it, did you?

A. Never thought about it that way.

Q. The doctor told you that you had [Tr. 21] asbestos in your lungs, and you went to see a lawyer.

Why did you go to see a lawyer?

A. Because down the road, I wanted to be compensated. If anything ever come up, I wanted to be compensated.

I didn't want my wife to have to go without the necessities and everything that I could provide for her the way I am.

Q. You wanted to be sure you were taken care of if something developed?

A. Right.

Q. Now, you signed a second contract with your lawyer; it looks like about the same day here.

(Deposition Exhibit R-2 referenced.)

BY MR. BARON:

Q. We will call this one R-2. For the record, this is a "Contract of Employment and Power of Attorney, Re Asbestos Evaluation."

This contract calls for a claim against Manville and other asbestos suppliers for any asbestos-related disease, and it was

[Tr. 48] Q. What did your lawyer tell you?

MR. NOLAN: Objection.

THE WITNESS: About what, sir?

BY MR. BARON:

Q. About what to do next after you got this report.

A. Sir, I don't think — I don't think — I think you misunderstood — misunderstood the whole thing.

My lawyer did not tell me — did not — he did not come to me and tell me to sue or to get money or anything else. I went to them. I went to them, sir.

And they have done — I have talked it over with them. They have done just what I wanted them to do.

Q. What do you want them to do?

A. I want to be — I want to have a — a clear mind. I want to be able to look down the road and say, "Some day I'm going to be compensated if I get sicker. I'm sick now, and if I get sicker, I want to be compensated for it."

Q. What are you sick with now?

A. I've got asbestos in my lungs, [Tr. 49] sir.

Ms. Bollinger — Dr. Bollinger told me that two or three years, two or three years she said I had asbestos in my lungs.

Q. Did she tell you that you had any diseases?

A. She said it was changing. Two years — she said my lungs was changing, yes, sir.

Q. You told your lawyer that you wanted to be protected down the road?

A. Yes, sir.

Q. And what options did he give you to protect you down the road?

A. There again, sir, I don't remember any options he actually gave me.

I'm the one that went in to him, if he would sign me up to workmen's comp.

Q. That was in 1991, wasn't it?

A. Yes, sir.

Q. Did you ever give him instructions to file a class action lawsuit for you?

A. Yes, sir.

Q. When did you give him those [Tr. 50] instructions?

A. There again, sir, you asked for these dates, and there has been so much, I can't pinpoint everything down, sir.

Q. How did you know to tell him that he should file a class action lawsuit for you?

A. It was on TV. It was in the papers.

Q. And that's what tipped you off that you should have one of those? Is that right?

A. Yes, sir. That's what —

Q. So until you saw it on the television and in the newspapers, you hadn't given a thought to filing a class action; is that right?

MR. NOLAN: Objection to the form of the question.

THE WITNESS: No.

MR. NOLAN: I'm not sure I understand. I don't know what you mean when you say "it."

BY MR. BARON:

Q. Did you see some things on the [Tr. 51] television and in the newspaper about a class action lawsuit over the last couple of weeks?

A. I can't say the last couple weeks, sir. It was before that I seen it in the paper.

Q. About when.

A year ago? Six months ago?

A. Yeah. It was probably close to a year ago, sir.

Q. So about a year ago you saw something in the newspaper about a class action?

A. (Nodding.)

Q. Is that the first time you thought about it?

A. I don't know. I'm not going to say for sure, sir.

Mr. Nolan and I have talked about it, and whether I brought it up, whether he brought it up, I can't say for sure.

Q. I'm trying to pin this down a little bit.

Let's see if we can't tie down some specific dates, and I know it's hard for you, but do the best you can, if you would, for [Tr. 52] me.

Since November 1st, or, say, the last two and a half months, have you seen anything on the television about a class action lawsuit concerning asbestos that you can recall?

A. It hasn't been just recently, but whether it's been back that far or not, I can't pin it down.

Q. What did it say about class action lawsuits?

A. I can't tell you that, sir. I can't tell you that. All I seen on there was asbestos-related and to get a hold of — to get into this class action. It was a good thing. I mean, that was — and I thought it was a good thing. My wife and talked about it before we — we talked about it, and it looked like a very good thing to me.

Q. So you saw it on the television, you talked about it, and then did you call your lawyer to see if you could get involved?

MR. NOLAN: Objection.

BY MR. BARON:

Q. Is that what happened?

* * * *

[Tr. 83] Q. After having signed an agreement giving Mr. Nolan the power to file a claim against the Manville Trust and other asbestos suppliers in 1991, you didn't file such a claim?

A. No, sir.

Q. And I'm trying to find out why not.

A. Because I don't deserve any money, sir.

I don't want any money. I don't want any money — I don't need any money right now.

But if I do need money, I would like to have it. It would give me great peace of mind, if I do need money down the road, that it would be — that I would be taken care of.

Q. Did you conclude in 1991, sir, that based on your physical condition at that time that you, in your words, didn't deserve any money and didn't need any money?

Was that a decision that you made?

[Tr. 84] A. Yes, sir.

Q. When you filed this lawsuit, the one that was filed in January of 1993, at the time that you filed the lawsuit, had you decided that based on your condition at that time that you didn't deserve any money and didn't want any money at that time?

A. That's true, sir. I didn't want any money at that time. Still don't want any money.

Q. Am I correct that you have decided that as long as your physical condition remains as it is today, you will neither deserve nor want any money in compensation for that condition; that's true?

A. That's true, sir.

MR. LOCKS: Mr. Riley, not that I would ever cut you off, especially since you were kind enough to share a drink with me last night, but for the last fifteen minutes in the questions, I can't for the life of me understand what that has to do with the client you purport to represent, and particularly in light of the circumstances of your client's position of not being in the marketplace after

* * * *

[Tr. 105] Q. Is it your view that those screenings were sufficient to, in your mind, see whether you had any problems related to asbestos?

A. As far as I can see fit, they were, sir. I'm no doctor, but...

Q. So as far as you are concerned, you didn't see the need to pay for any of your own screenings in addition to what Congoleum was paying for?

A. No, sir.

Q. As you sit here today, are you asking the defendants in this suit to pay for medical screenings?

A. No, sir. I'm not asking anybody to do anything.

Q. In January 1993, when you filed this suit, did you have a need for the defendants to pay for any of your screenings?

A. No, sir.

Q. So far as you know, you weren't asking for any payment for monitoring of your medical condition by the defendants in 1993?

A. No, sir.

[Tr. 106] Q. In January of 1993; is that correct?

A. Yes, sir, that's correct.

MR. WOLFMAN: That's all I have.

MR. BARON: One or two quick ones, Mr. Raver.

- - -

EXAMINATION

- - -

BY MR. BARON:

Q. Are you a member of a union?

A. No, sir.

Q. Have you discussed this class action with other people that you work with?

A. Yes.

Q. Has anyone ever asked you how to exclude themselves from the class action?

A. No, sir.

Q. Do you know how someone would exclude themselves from the class action if they wanted to?

A. I think so.

Q. When did you learn that? Was that yesterday, when you met with the lawyers?

A. No. I read about it at home

* * * *

[Tr. 115] Limitations because of the x-ray reading that occurred in 1990?

MR. NOLAN: Objection.

MS. WHITE: Objection.

BY MR. BARON:

Q. Did you understand?

MR. NOLAN: Do you understand, sir?

THE WITNESS: Yes. Yes. Yes.

BY MR. BARON:

Q. That was the reason why you thought this was a good idea?

A. Yes.

Q. So that you could protect yourself from the three-year Statute of Limitations?

A. Yes.

Q. And you believed, did you not, that you were first told or diagnosed with an asbestos-related injury in 1990; is that right?

A. October of 1991, wasn't it, sir? 1990. I'm sorry, 1990.

Q. I think on the contract —

A. I think it's 1990, too, sir.

Q. In the contract it says 1990.

* * * *

DEPOSITION OF NAFSSICA KEKRIDES

* * * *

[Tr. 10] Q. So the mesothelioma, as I understood it, turned up in July of 1992?

A. Yes.

Q. Is that right?

A. Uh-huh.

Q. And he became much worse off while you were on vacation in Greece?

A. Yeah. I bring him back after twenty days I am in Greece. I take him back to Florida, straight to a hospital, and he started on chemotherapy.

Q. Was he in Florida at the time that he developed the disease?

A. Yes.

Q. Were you living in Florida at the time?

A. Uh-huh.

Q. Are you a resident of Florida now?

A. Yeah. I have one sister in Florida.

Q. Does she live in Florida with you?

A. No. With me, just in my place.

Q. What city did you and your [Tr. 11] husband live in when he became disabled?

A. Philadelphia, and then the doctor for Philadelphia transferred for Tampa. The weather is more nice in Florida after he had the accident.

Q. So at the time that you found out your husband had mesothelioma, you were living in Florida?

A. Yes.

Q. Now, before your husband became disabled, what type of work did he do?

A. Painter.

- Q. He was a painter?
- A. Yes. He was working very hard.
- Q. How long was he a painter?
- A. From 1967 to '81.
- Q. What did he do before he was a painter?
- A. Before he was living — I think in 1962, he come to the United States, in California, and he working in a redwood, plywood.
- Q. Redwood and plywood?
- A. Yeah, this kind of company working before. In 1966, come back to [Tr. 12] Philadelphia.
- Q. So he lived in California from the time he came from Greece in 1962?
- A. Yes.
- Q. You think?
- A. Yes. Through '66.
- Q. Through '66, and he worked in the lumber business?
- A. Yes, lumber business. Uh-huh.
- Q. Then in 1966, he moved to Philadelphia?
- A. Yes.
- Q. Did he become a painter when he came to Philadelphia?
- A. Yes.
- Q. When he passed away, how old was he?
- A. 56-1/2. 1936 is born, June 26.
- Q. From 1936 up until 1962, when he moved to the United States, do you know, did he live in Greece?
- A. Yes.
- Q. Do you know what types of work that he did in Greece?
- A. Yeah. His mother had a farm.
- [Tr. 13] Q. His mother had a farm?
- A. And he sold milk.
- Q. So he was in the milk business?

- A. Yes.
- Q. Did he do any other type of work when he was in Greece?
- A. He was working in a factory fixing up shoes.
- Q. Fixing up what?
- A. Shoes. Leather shoes.
- Q. Did your husband ever tell you before he developed this cancer —
- A. No.
- Q. — that he had worked with asbestos?
- A. No. Last year we find out he was sick for asbestos.
- Q. You told me that in July of 1992 is when he found out he was sick from asbestos, from this cancer?
- A. Uh-huh.
- Q. Right?
- A. Yes.
- Q. Before he learned that he had this asbestos cancer in July of 1992, had he [Tr. 14] ever talked to you about working with asbestos?
- A. No.
- Q. Did you know before he became sick with this cancer that he had ever worked with asbestos?
- A. No.
- Q. Did you even know what asbestos was before he got sick with this problem?
- A. No.
- Q. No?
- A. No.
- Q. How did he learn that his problem might be related to asbestos? Or do you know?
- A. I don't know.
- Q. Before he died, did he tell you that he had worked with asbestos?

A. Yes.

Q. Did he tell you when and where he had worked with asbestos?

A. You mean the place he was working?

Q. Yes.

A. Yes. He was working in Sun Oil Company and used a lot of asbestos.

[Tr. 15] Q. So his exposure to asbestos was at Sun Oil Company?

A. Yes.

Q. When did he start working for Sun Oil?

A. Working from 1966 for different companies; Myers and Watters, Murphy Company. I can't remember any other companies.

Q. When did he start working for Sun Oil; do you remember?

A. He was working from 1969.

Q. So he began working for Sun Oil in 1969?

A. Yes.

Q. Did he work there until he became disabled in 1991?

A. Yes. The time he fell down is disabled.

- - -

(Off the record.)

- - -

BY MR. BARON:

Q. Mrs. Kekrides, your husband became disabled in 1981?

A. Yes.

[Tr. 16] Q. Not 1991?

A. No.

Q. So his employment was for a painting contractor who did some work at Sun Oil?

A. Yes.

Q. And that began in 1967 and continued through '81; is that right?

A. Yes.

He was going all over, you know.

Q. To many different jobs?

A. Yeah, different jobs.

Q. Do you know whether your husband ever used any paint that contained asbestos?

A. He used it. I don't know exactly when, you know.

Q. Did he tell you that he used asbestos paint?

A. Yes.

Q. He did?

A. (Nodding.)

And he mix her up, the asbestos, the paint.

Q. After you found out that your husband had mesothelioma, how did you learn [Tr. 17] that it was caused by asbestos?

A. Well, the doctor made the operation for my husband July 27, 1992. He say, Mrs. Kekrides, "Your husband have asbestos, mesothelioma, and does not have life and he need chemotherapy to see."

And my husband very strong man, and after he started operation, he got sick and sick and sick.

Q. What made you decide to see a lawyer — or what made him decide to see a lawyer?

A. After my doctor told me he have mesothelioma, I talked to my lawyer, Steve Wilson.

Q. Did you know Steve before?

A. No. I know another lawyer, Mike Deutsch.

Q. Where is Mike Deutsch located?

A. Here in Philadelphia, Chestnut Street.

And he give me Mr. Steve Wilson specially for asbestos.

Q. When did you call Mr. Deutsch; do you remember?

[Tr. 18] A. Yeah. July of 1992. 28th.

Q. Oh, you know that?

A. Oh, yes.

Q. July 28th of 1992 you talked to Mr. Deutsch?

A. Mike.

Q. And he gave you the name of Mr. Wilson?

A. Yes.

Q. Did your husband do that or did you do that?

A. I am do it because my husband is very sick after the operation.

Q. Did your husband remain in Florida from the time of his operation until the time he died?

He didn't come back up here to Philadelphia, did he?

A. No.

Q. After you contacted Mr. Deutsch and he told you about Mr. Wilson, did you call Mr. Wilson?

A. Oh, yes. And Mr. Wilson come to my house in Tampa, and my husband is knowing everything for asbestos in there from [Tr. 19] Mr. Wilson, yeah.

Q. So Mr. Wilson came to Tampa?

A. Yes.

Q. And he met with your husband and your husband gave him information?

A. Yes.

Q. Was there a retainer agreement signed at that time? A contract?

MR. WILSON: There was a retainer signed, actually, which was sent by mail prior to my visit.

MR. BARON: If we could just get a copy of it real quick?

(Deposition Exhibit 1 referenced.)

MR. BARON: Let me mark this as K - 1.

BY MR. BARON:

Q. Mrs. Kekrides, I'm going to hand you a document that I've marked as Document Number K-1.

Do you see that particular document?

MR. WEINGARTEN: Is there a [Tr. 20] question pending?

BY MR. BARON:

Q. Is that the document that you in fact signed with your husband?

A. Yes.

Q. Now, the date on that document is what?

A. 9 - 8 - 9 2.

Q. 9 - 8 - 9 2.

Do you recall signing that document?

A. Yes.

Q. Did you sign it when Mr. Wilson came down to visit with you?

A. Yes.

Q. Well, then, would that tell you that Mr. Wilson came down to visit with probably in the first part of September of 1992?

A. Uh-huh.

Q. Does that sound right?

A. Yes.

Q. Did he just come once or did he come on many occasions?

A. He come two times, and before my [Tr. 21] husband died, he come down with another lawyer, Jim —

Q. Another lawyer?

MR. WILSON: Jim Long.

BY MR. BARON:

Q. Did Mr. Wilson say he was going to file a lawsuit?

A. Yes.

Q. Who did he say he was going to file a lawsuit against? Did he say?

A. To the company that make the asbestos.

Q. Did he file the lawsuit, to your knowledge?

A. I don't know yet.

Q. You don't know whether he's filed it yet?

A. (Indicating in the negative.)

MR. BARON: Steve, was there a lawsuit filed in Florida?

MR. WILSON: The lawsuit was filed in Philadelphia, Court of Common Pleas, as well as the class action.

BY MR. BARON:

Q. Mr. Wilson told you they were [Tr. 22] going to file a lawsuit for you in Philadelphia; is that right?

A. Yes.

Q. Did he tell you that in September of 1982 when he came down to visit with you?

A. Yes.

Q. He came down in September of 1982 and visited with you and your husband.

When was the next time that you heard from anyone from his law firm?

A. I think February and March, 1993.

Q. That was the next time you heard from them?

A. Yes.

Q. What did they tell you in February or March of 1993?

A. They told me he's working for my husband's case and not finished yet, you know.

Q. So they told you they were working on your husband's case and nothing had happened yet; is that right?

A. Uh-huh.

Q. Now, did you hear from them [Tr. 23] again after February or March of 1993?

A. Yes.

Q. When was the next time?

A. This coming April, in my house again.

Q. So it would have been April of 1993, and that would have been about the time your husband passed away?

A. Before my husband died. 15 April 1993.

Q. So they came to see you April 15, 1993?

A. Uh-huh.

Q. What did they have to tell you on April 15, 1993?

A. They come and check — talked to my husband, and my husband not well to talk, you know. And they take video of my husband's body because he was very bad. Left side, my husband big like this (indicating) from the mesothelioma.

Q. So they took a video of your husband.

Did he give his deposition? Did he give testimony like this?

[Tr. 24] A. No. Is come more lawyers; I don't know the names. I forgot the names. Nobody going upstairs to talk to my husband because he's very sick.

Q. So some lawyers came over?

A. Yes.

Q. But you told them they couldn't see your husband because he was too sick?

A. Yes.

Q. Was it explained to you that a deposition had been set up, but it had to be canceled because your husband was too sick?

A. Yes. Yes.

Q. At the time they came over to see you on April the 15th of 1993, did anyone mention to you that your case had been settled?

A. Not yet.

Q. When was the first time that you learned that there might be a settlement in the case that you had filed in Philadelphia?

MR. WILSON: I'm going to object to that question. It is confusing.

The testimony is there have been two cases filed in Philadelphia.

BY MR. BARON:

[Tr. 25] Q. Do you know that there have been two cases filed in Philadelphia?

A. Yes.

Q. Do you know when they were filed?

A. No. I don't know.

Q. But you gave authority to have them filed on September the 8th of 1992; correct?

A. I don't know.

Q. When you signed the contract —

A. Yes.

Q. — with the lawyers on September 8th of 1992, you gave them authority to file lawsuits that were necessary?

A. Yes. Yes.

Q. Did you give them authority, if they were able to, to try to settle the cases for you?

A. I don't understand this.

Q. All right. You don't understand.

Did anyone from Greitzer & Locks, the law firm in Philadelphia, contact you in the fall of 1992, in September or

* * * *

[Tr. 37] Q. Did you do that shortly after his death?

A. Yes.

Q. After he died, did they communicate with you about the class action case in Philadelphia?

Did they talk to you about it?

A. At the time my husband died, I speak to the doctor, the chemotherapy doctor, and I make special treatment, my husband, and he keep it, the mesothelioma in the lung for asbestos.

And everything, my lawyer have.

Q. At the time your husband died, did you know anything about what was happening in the class action case that had been filed in Philadelphia? Or did you learn that information later?

A. Yeah, I know from my lawyer.

Q. What did your lawyer tell you before your husband died about the class action case in Philadelphia?

Now, before your husband died.

MR. WILSON: Meaning at all times before? Not immediately before he died, [Tr. 38] but at any time before he died?

MR. BARON: Right.

THE WITNESS: Yeah, I have case; my husband case, I have case for asbestos.

BY MR. BARON:

Q. Yes?

A. Because my husband died from asbestos.

Q. Yes?

A. And that's all.

Q. So you understood that you had a case because your husband died from asbestos?

A. Yes.

Q. And that's all you really knew about the case?

A. Yes.

Q. Did he ever sit down and explain to you, before your husband died, how much money you might be able to receive?

A. He not say exactly, no.

Q. Did he give you a range?

A. I know for the book I see here, for 20,000 to 200.

Q. When did you first see the book?

That's the settlement book, is [Tr. 39] it not?

A. Yes.

Q. When did you first see that?

A. I see here yesterday.

Q. Was that the first time you had seen the settlement?

A. Yes.

Q. Do you know whether your husband had seen that book before he died?

A. No.

Q. Before yesterday, had you been told that there was a settlement in the class action case?

A. Yes.

Q. When were you told that?

A. Two weeks before.

Q. Two weeks ago?

A. Uh-huh.

Q. Before two weeks ago, did you know that there had been a settlement in the class action case?

A. No. Two weeks ago, I know I come here in Philadelphia for today for deposition.

Q. Right. I understand.

[Tr. 40] Let me see. I don't want to put words in your mouth, so stop me if I am. I'm just trying to be certain I understood what you said.

Two weeks ago, for the first time, you learned that the class action had been settled and you were going to have to come to Philadelphia for a deposition; right?

A. Yes.

Q. So before two weeks ago, you did not know the class action had been settled; is that correct?

A. Yes.

Q. Were you surprised two weeks ago to learn that the class action had been settled?

A. No, it's not surprise. I know I have case because my husband died from asbestos.

Q. Were you happy when you found out two weeks ago for the first time that the class action had been settled?

A. I not happy because I lost my young husband, but, you know, I do not have a choice.

[Tr. 41] Q. Before two weeks ago when you learned that the class action was settled for the first time, had you seen anything in the newspapers about the class action?

A. Yes. I see — my sister see in Florida, one woman sued a company for a million dollars because her husband died from asbestos.

Q. She saw an article about a suit in Florida for a million dollars?

A. Yes.

Q. Have you seen anything in the newspaper about your case in Philadelphia, the class action case?

A. No.

Q. Have you seen anything on the television about your case in Philadelphia, the class action?

A. It's my brother-in-law see it on the TV.

Q. I didn't ask about your brother-in-law. I'm asking if you saw anything.

A. No, no.

Q. So you, yourself, did not seeing [Tr. 42] anything in the newspaper, nor did you see anything on television about the class action Philadelphia case; is that right?

A. Yeah.

Q. Did you, before two weeks ago, receive anything else in the mail about the class action case in Philadelphia?

A. No.

Q. Do you know what a class action is?

A. For the people have problem for asbestos.

Q. When did you learn what a class action was?

A. My son explained to me here. I have one son.

Q. When did he explain that to you?

A. A couple months before.

Q. What was the name of the doctor who did the autopsy.

Do you remember?

A. It was the Town and Country Hospital.

* * * *

DEPOSITION OF AMBROSE VOGT

* * * *

[Tr. 9] And then I just kind of drifted around in and out of school, and it was 1974 when I actually got into the Local, and I've been doing it ever since.

Q. So your first full-time "this is my profession, insulation work" began in 1974?

A. Yes.

Q. Is that when you became an actual apprentice in the insulation trade?

A. Right. That's when I was sworn into the Local as an apprentice.

Q. What was the name of the local union who you were sworn into?

A. Local 11.

Do you want the number?

Q. No. What's the actual title?

A. International Brotherhood of Heat and Frost Insulators and Asbestos Workers.

Q. Are you still a member of that union?

A. Yes.

Q. Are you still working full-time as an asbestos worker/insulator?

A. Yes.

Q. Now, Mr. Vogt, I've been given a [Tr. 10] copy of your medical records, and it appears from time to time that you've had x-rays taken of your chest; is that right?

A. Yes, sir.

Q. About how often does that occur?

A. I'd say since around '83 is probably average; maybe one a year, maybe one every eighteen months or so. They skip a year.

Q. Is that to monitor your condition?

A. The ones from '83 and '84 were for physicals because I was working at a nuclear power plant and you had to have a physical to get in. Now, whether they were read by a B reader or not, I don't know.

After that, when I started working for Porter Hayden and PTX, I was getting them about every year, and they were read by B readers.

Q. When you say B readers, those are people specially trained to read x-rays for asbestos-related disease?

A. Yes.

Q. So to summarize, would it be fair to say that for the last ten years or so [Tr. 11] you've had regular examinations to determine whether there are any changes in your chest related to asbestos disease?

A. Right.

Q. Would it also be fair to say that all of those examinations and x-rays and things of that nature have been paid by the companies that you worked for?

A. Yes.

Q. Have you, yourself, as of today, spent any out-of-pocket money trying to determine whether or not you have an asbestos-related-disease?

A. I had a physical in 1991 that was paid for by my insurance company, and I had that x-ray read by a B reader. That was with Dr. Schwartz, and all I paid was a \$10 co-payment.

Q. So as of today, the total amount of money that you have spent, yourself, out of pocket to monitor yourself for asbestos-related disease is about \$10?

A. Yeah. Not counting gas to get back and forth and so forth.

Q. Right. Not counting gas to get [Tr. 12] to the doctors.

And that has been for eleven years — ten years?

A. Ten years.

Q. Do you expect that your employers will continue to provide you with free x-ray services and diagnostic services in the future?

A. That would depend on who I worked for. If I worked for an asbestos removal company, they are required by law to do that, yeah.

Q. Is that who you are working for now?

A. The company I am working for now is Pinnacle Insulation, and they have a subsidiary called PTX, Incorporated, and PTX does the asbestos removal — everything — you know, they have the same office, the same bosses, just a different company and a different colored check is the only difference.

Q. Are those companies, and particularly PTX, required by law to pay for your x-ray review every year for asbestos screening?

[Tr. 13] A. Yes.

And from what I understand, they have to keep those records on file for thirty years, I think.

Q. So long as you stay in the business that you are in, you will have free x-ray screenings for lung disease?

A. Yes.

Q. Do you have any current plans to change your business?

A. If I could find something suitable that paid as much, I would be gone tomorrow.

Q. Wouldn't we all?

A. Yeah.

Q. Have you found anything over the last few years?

Have you got anything in mind specifically now?

A. No.

* * * *

[Tr. 17] Q. Have you ever gone to a lawyer and said, "Sue somebody for me; I think I'm due some money from asbestos exposure"?

A. No.

Q. Have you ever authorized a lawyer to file a suit for you for damages for asbestos exposure?

A. Just this one.

Q. Are you seeking money damages in this case?

A. Not at this time. I just want the assurance that there will be some money left if anything ever develops.

Q. So you are interested in assuring that all of the money won't be spent on your friends?

A. Yes.

Q. That get sick, anyway?

A. Yes.

Q. So that if in the future you were to get sick, you want to be certain there's going to be plenty money left to compensate you?

[Tr. 18] A. Yeah.

Q. Would it be fair to say that that's your primary concern in this case?

A. I've seen, over the years, a lot of people get a lot of money. Some people get very little.

All in all, I've seen the well running dry; you know, a lot of big outfits going bankrupt, and there's still a lot of people out there that have been exposed to asbestos like myself that somewhere down the line may get — may have complications from that.

And I would just like to see something set aside, something that's — something that would be fair for everybody involved, even the people that are sick now.

Q. So your primary interest, then, in this case is being sure that there is enough money set aside for people like yourself and others that will get sick later?

A. Right.

MS. WHITE: objection. He gave you a much more complicated answer than that before.

[Tr. 19] MR. BARON: It's on the record.

BY MR. BARON:

Q. Does that basically sum it up?

A. Would you state that again?

Q. So your primary interest—and I say primary interest—in this case is being sure that there is enough money set aside for people like yourself and others that might get sick later?

MR. NOLAN: Objection.

MR. WILSON: Objection.

MS. WHITE: Objection.

BY MR. BARON:

Q. Is that true?

A. Sick from asbestos?

Q. From asbestos.

Is that right?

A. I would say yeah.

Q. Has anyone ever told you that you will definitely get an asbestos-related disease?

A. There have been people that have said that, but nobody with — you know, that really means anything. I mean just other insulators and so on.

* * * *

[Tr. 28] MR. BARON: Are you going to instruct him not to answer?

MS. WHITE: I do not have the authority to instruct him not to answer.

BY MR. BARON:

Q. Answer it.

A. No, I'm not going to swear to it.

Q. Did he have a copy of the Complaint that was going to be filed on the 15th?

That's another document, and I've got a marked-up copy that has my own notes on it that looks like this.

A. I think you — I don't know. I don't know. Not on the 14th; I can't be certain. I can't be certain.

But I had copies of both of them very shortly.

Q. Did Mr. Nolan ask for your feeling about how much money people should get who had asbestos-related diseases?

A. He showed me the schedule of awards for the different classifications of illnesses that day, yes.

[Tr. 29] Q. On the 14th?

A. On the 14th, yes.

And they seemed — you see, I — I don't — I don't really know, you know, what's fair and equitable. It's all based on an individual — the individual cases.

But the ranges that he showed me seemed fair to me; from the people I know who have had cases settled, that they were well within the boundaries of what they got.

Q. For instance, you know Daniel Minor, Jr., do you not?

A. Yes.

Q. Daniel Minor, Jr. had an asbestos-related claim; right?

A. Yes.

Q. And he received some money for it?

A. Yes.

Q. Do you know how much he received?

A. No.

Q. Do you have an idea?

A. No idea at all.

* * * *

[Tr. 33] A. I don't know. I can't answer that honestly.

I mean, there may be somebody living in the mountains somewhere, you know.

Q. Did you see the advertisement in the newspaper for this settlement?

A. No.

Q. Did you see the television advertisement for this settlement?

A. I don't think so, no.

Q. Well, how did you know about the settlement other than what your lawyer told you?

A. I had a copy of it there.

Q. If you hadn't had a copy of it, how would you know about it?

A. I don't know. I guess watch more television, or word of mouth.

Well, as a matter of fact, I got a letter from the — from the International Heat and Frost Insulators, from their international office, stating that there was a class action suit in progress.

[Tr. 34] Q. Did they explain to people how they could exclude themselves?

A. I didn't read the whole correspondence. It was a couple of pages, and I was being represented by Steve and I just didn't bother to read it, no.

Q. On January 15, 1993 when this lawsuit was filed in Federal District Court in Philadelphia, did you feel like you had been harmed by asbestos?

A. Harmed? No. Just exposed.

Q. On January 15, 1993 when this lawsuit was filed in Philadelphia, did you feel like the asbestos companies owed you some money then?

A. No.

Q. When I say "some money," I mean anything more than zero.

A. Yeah.

Q. That's what you understand that to mean?

A. Uh-huh.

Q. So on January 15, 1993 it was your belief that the asbestos companies did not then owe you any money at all?

[Tr. 35] A. Right.

Q. When was the next time that you heard from Mr. Nolan about this case?

A. Let me see.

I received copies of the Complaint and copies of the settlement, and he called me — let's see. I signed some medical release forms that he mailed me, and I sent them back, and I guess it was about — I don't know; five or six months later he called me back just to fill me in on what was happening, the progress.

Q. So you heard from him five or six months after you first talked to him?

A. Yeah, I would say —

Q. Is that about right?

A. Yeah. At least that.

Q. Would it have been sometime during the summer?

A. I believe it was, yes. Summer or early fall.

Q. And that would have been the time after January 14th?

A. Yeah.

* * * *

DEPOSITION OF JAMES CRAPO

* * * *

[Tr. 24] BY MR. BARON:

Q. How did he define the right people who should be compensated?

A. He never defined that for me.

Q. How did you understand it?

A. I understood it, from using my own concepts and standards, as being individuals who had suffered a personal injury as a result of asbestos exposure would be deserving of compensation, and that's the class that should be compensated uniformly and fairly and consistently across the class.

Q. I think you told me you've reviewed over four hundred cases, have you not?

A. Yes.

Q. Would it be fair to say that a large number of those cases that you've reviewed would not meet the standards of this settlement?

MR. HOUFF: Objection.

If you know the answer, you can answer.

THE WITNESS: I couldn't give you a quantitative answer to that.

[Tr. 25] A substantial number wouldn't have met it and a substantial number would have met it, but I couldn't really break it down and say anything more precise than that.

BY MR. BARON:

Q. But you would agree, then, and I think your answer was, a substantial number would not have met this criteria?

A. That's correct.

Q. And why is that?

A. They didn't have an injury.

Q. But those are cases that were being handled by lawyers for purposes of compensation in the tort system, were they not, as you understood it?

A. Yes, and many of those cases weren't compensated when they went through the tort system.

Q. How do you know that?

A. Because the trials didn't award them an injury.

Q. Of the four hundred cases that you've reviewed, how many cases actually went to trial?

* * * *

[Tr. 45] I think this is — this is an opinion that would be at the outer fringe of the practice and philosophy in pulmonary medicine today, and I don't think that would represent the consensus opinion of the majority of the pulmonologists in the United States today.

BY MR. BARON:

Q. Have you ever taken a vote?

A. I've talked with a substantial number of people.

I think I have a pretty good feeling for their consensus opinion.

Q. Would it be fair to say that there are a lot of different doctors with a lot of different opinions on how to diagnose asbestosis, based on the fact that you've seen four hundred of these cases?

A. I think that there is clearly variability on how doctors would diagnose it, but I think there is a clear-cut consensus opinion within the mainstream of pulmonary medicine today. For example, the kinds of pulmonary medicine — the subspecialty board, for example, where it would be an appropriate [Tr. 46] question to represent consensus. And I think you would find it easy to define that.

There have been meetings on that held by the best societies in chest disease, and there are written documents on it that have given you better criteria than that for the diagnosis of asbestosis.

Q. Are you familiar with the Canadian government's standards for diagnosing asbestosis?

A. No.

Q. Are you familiar with the British government's standards for diagnosing asbestosis?

A. No.

Q. Do you believe there are physicians in the United States who would diagnose asbestosis without the criteria of this settlement document having been met?

MR. HOUFF: Objection. You can answer.

THE WITNESS: Yes.

BY MR. BARON:

Q. You just happen to disagree with them?

[Tr. 47] MR. HOUFF: Mischaracterization.

THE WITNESS: I don't just happen to disagree with them. I disagree with them after very carefully studying the pathophysiology of the disease, and the extensive published literature on it, and carefully reviewing the basis for which a proper diagnosis should be made. It's not just "happen to disagree."

BY MR. BARON:

Q. I understand. But you are aware that in each of the cases that you have testified in that an individual did not have an asbestos-related disease, there was somebody else testifying that he did, or she did?

Right?

A. I'm not aware of that, actually, but I assumed that was probably the case.

I have never been in the presence of a deposition or trial for anyone in which other than myself was speaking — with only one exception to that.

* * * *

[Tr. 85] claim under either the "Pleural" or the "Asbestosis" section of the "Medical Conditions" section, because they would have to allege that there was either an asbestos-induced injury either in the pleura or in the lung in order for them to have a pleural effusion.

It would go under that category, and you'd ask for a special exception if that occurred. I don't think you will find one patient that meets that criteria.

Q. I would like you to meet about ten or twelve of them, but that isn't here nor there.

A. Send them to me.

Q. Yeah, I'm really going to.

MR. HOUFF: Objection. That's abusive and harassing.

MR. BARON: I'm sorry.

BY MR. BARON:

Q. Doctor, do you believe that underlying asbestosis has to be present before you can attribute lung cancer to asbestos exposure?

A. Do I believe that underlying [Tr. 86] asbestosis —

Q. Yes.

A. Yes.

Q. Do you think that's a settled issue or is it up in the air?

A. I think it should be a settled issue, but there is still debate about it.

Q. Have you talked to Dr. Roggli about it?

A. Yes.

Q. Dr. Roggli disagrees with you, does he not?

A. I think Victor would — the difference between Victor and I, Victor would accept it based on a pathologic definition of asbestosis whereas I would not.

Q. Have you read Dr. Roggli's brand new book that he just published on this issue?

A. Yes.

Q. It says, "The issue of asbestosis as the primary cause of lung cancer among asbestos workers should not be considered to be settled, and more studies are needed to resolve this question with certainty."

[Tr. 87] Do you agree with that?

MR. HOUFF: I object.

THE WITNESS: I'm always interested in the continued investigation of medical diseases, and I would agree we need more

research to understand that process, because we don't understand its pathogenesis.

There is, however, a significant body of literature in existence on that topic already.

BY MR. BARON:

Q. There is a very significant body of literature?

A. And that significant body of literature says it requires asbestosis in order for the — I'm talking about the actual data, not the opinions of people, or the interpretations thereof.

I'm talking about the data itself.

The data says that if you don't have asbestosis, you don't have an increased risk for lung cancer.

Q. Do you believe fibrogenesis and carcinogenesis are basically the same thing?

[Tr. 88] MR. HOUFF: Objection. You can answer if you —

THE WITNESS: No.

BY MR. BARON:

Q. They are different processes?

A. Yes.

Q. Then why is it necessary to have fibrosis before you can attribute carcinogenicity?

MR. HOUFF: I don't understand the question. I object.

BY MR. BARON:

Q. Do you understand?

A. That's a nonsense question to me.

I don't understand.

Q. Why is it necessary, then, to have underlying fibrosis before you can attribute the etiology of the carcinoma of the lung?

MR. HOUFF: To asbestos?

BY MR. BARON:

Q. To asbestos.

A. You are asking for my opinion?

Q. Well, do you know the answer?

[Tr. 89] A. Nobody knows how asbestos contributes to the development of tumors precisely.

So once you start asking for the pathogenic sequence evolved, you are — there is only a limited amount of data, and you are largely going to be relying on opinion.

So I don't, in that sense, know the answer, but I do have an opinion.

Q. You are aware that there are many people that disagree with your opinion, are you not?

It's an open question, isn't it?

A. I think the majority of the people would agree with my opinion.

Q. Have you taken a vote?

A. I've talked to many people.

MR. HOUFF: Objection.

BY MR. BARON:

Q. That primarily the asbestos industry has introduced you to?

A. They include no one that the asbestos industry has introduced me to.

Q. Do you know Dr. Craighead?

A. Yes.

* * * *

[Tr. 91] THE WITNESS: I've read a lot of literature, so you would have to give me the article if you want me to comment on it.

BY MR. BARON:

Q. There (handing). There isn't a more recent one, is there?

MR. HOUFF: That's exactly right.

THE WITNESS: I don't know of one.

MR. HOUFF: That was my objection, Mr. Baron, because you are reading from what you don't identify.

BY MR. BARON:

Q. Do you know whether Dr. Craighead has changed his mind?

MR. HOUFF: Objection. Asked and answered.

He said he didn't know what Dr. Craighead's opinion was.

BY MR. BARON:

Q. How do you know what the consensus is? I'm curious.

A. I have had an opportunity to meet with and talk with large numbers of people [Tr. 92] about what goes on, what's going on currently in pulmonary medicine, and in the last four or five years I've served as the head of the Annual Meeting Committee for the American Thoracic Society, which I did all the planning of the meeting, and led the meeting with assemblers and worked with all major components.

I've led the American Thoracic Society, which meant that I met with colleagues on almost a weekly or monthly basis.

I also was chair of the Pulmonary Disease Advisory Committee, National Institutes of Health, and in that capacity met with some of my top professional colleagues three to five times a year in conferences, and we would go out to dinner together and we would talk about what's going on.

The asbestos controversy is one of the central themes that's going on in pulmonary medicine today because of all the litigation in this field, and it's been an issue on which we've talked on occasion.

So I've had many chances to move and talk among the people who lead the field of [Tr. 93] lung disease for the past decade, and I have a reasonably good feeling for what the consensus opinion is and what's mainstream and what's not mainstream.

Q. I take it you feel Dr. Roggli could not be mainstream?

A. I think Dr. Roggli is a very well-respected member of the community, and I think he is somebody whose opinions I would very highly respect.

I don't necessarily agree with all of them, but I think he comes from the point of view of a pathologist. Except for one small difference, he and I would be identical in our feelings.

The difference comes from the fact that I am trained as a practicing — I'm trained as a practicing pulmonary physician and he's trained as a clinical pathologist.

He views the literature in his experience as one would view it as a clinical pulmonary pathologist. As a result, he would diagnose cases as asbestosis based on pathologic findings.

In my opinion, a pathologic [Tr. 94] change does not create a disease until it's altered the ability of the patient to function or in some way created some type of either impairment or functional change in the patient.

That represents sort of a philosophical approach to it that comes from him being a pathologist and me being a clinician. But other than that, we are very good friends, and we don't see — we see these things quite similarly, and we can share these things. We can write articles together on it. We do not have a major disagreement.

Q. Well, you are not going to sit here and tell us that there is no disagreement among very qualified physicians about whether it is necessary to have underlying asbestosis in a lung cancer case to attribute it to asbestos?

You are not going to tell me that, are you?

A. That there would be —

Q. That there is no disagreement among very qualified —

A. No, I didn't say that. No, there is disagreement on that topic. [Tr. 95] I told you that I believed that the medical literature, if you look at the data itself and not the way that it's interpreted, the data says that you have to have fibrosis to a clinically significant degree before it increases the risk for development of lung cancer.

Q. But would you agree with Dr. Roggli that that's a hotly debated issue in the medical community now?

A. I would say the heat comes from the legal profession and not from the medical profession.

I don't see — when I go to the medical meetings, we don't get up and yell at each other and talk about it with any great degree of vehemency.

I've attended every session of the American Thoracic Society in which this kind of topic would have been on the agenda and I've never seen an argument in four or five years.

* * * *

[Tr. 116] Q. So as we sit here today, you cannot tell me that any individual has received money that shouldn't have received money in the tort system; is that right?

MR. HOUFF: Objection. Mischaracterizes his answer.

THE WITNESS: I don't really know the data on that.

What I said was — the statement I would stand behind is that I do believe that if there are — that this will compensate people who should be compensated, and if there are people who are being compensated today who will not be compensated by this, they are people who shouldn't be compensated.

BY MR. BARON:

Q. That's your belief?

A. That's my belief.

Q. What do you base that on, other than just a gut feeling?

A. I base it on extensive knowledge of the types of injuries that are caused by exposure to asbestos, and reading this document here to see if there is any kind of individual who would have a significant disability or [Tr. 117] injury, personal injury, as a result of asbestos exposure who wouldn't qualify under one of the pathways here to be compensated.

I can't find any significant process that should be compensated that doesn't fall in here. And by that, I mean a person who has a personal injury resulting from asbestos exposure.

So I've not been able to identify — I've been able to identify people who I think might qualify under this criteria and get compensated who I don't believe have a personal injury.

I think this will go in the direction of overcompensating, but I think it will do very little in terms of missing people who should be compensated.

Q. But you have no opinion one way or the other as to whether it will cut out people who are presently being compensated; is that right?

MR. HOUFF: In the tort system?

MR. BARON: In the tort system.

MR. HOUFF: I object.

* * * *

[Tr. 123] A final is what? Is it going to change? Is there going to be new data?

Q. Is there anything else you have remaining to do with regard to this?

A. No. No, not that I know of.

Q. You haven't been asked to do anything further?

A. No.

Q. So as of today, you have an opinion that you don't anticipate changing in the future?

A. That's correct.

Q. What is your final opinion with regard to this settlement?

MR. HOUFF: Objection. Asked and answered.

THE WITNESS: It is that this is a fair compromise, and that it will miss — I don't believe it will miss any significant number of people who would have a compensable injury in response to asbestos exposure.

My opinion is that it will compensate people who do not have an injury resulting from an asbestos injury.

I think it will — it tends a [Tr. 124] little bit on the lenient position of identifying people who are — who have minimal or no injury and providing compensation.

BY MR. CLARK:

Q. Now do you define "significant number of people"?

MR. HOUFF: Objection.

THE WITNESS: I can't think of any class that would be excluded, but as I'm trying to speak with some rigor, I would have

an open mind if someone could identify an individual or type of injury that won't be compensable.

It has a clause in here called the special claim — exceptional pathway, and with that, I think it should pick up all of them.

BY MR. CLARK:

Q. You just testified that you didn't think this was a significant number of people?

MR. HOUFF: Objection. I think he answered it.

THE WITNESS: That's what I said. I don't think — in fact, it shouldn't [Tr. 125] miss any, being that it has a pathway for any unanticipated problem to be compensated for by going through the exceptional pathway.

BY MR. CLARK:

Q. Probably, but you are not sure; is that what I'm gleaning?

MR. HOUFF: Objection.

THE WITNESS: I said it's my opinion that it will compensate all the people who should be compensated and has a pathway for correction of any potential unforeseen errors that could occur.

BY MR. CLARK:

Q. Have you just changed your opinion in the last four questions?

A. No, it's the same answer. I was trying to say it in different ways so that you will understand it.

Q. I understand that you are saying it in different ways, but did you not just testify that you did not believe that this would miss a significant number of people who should be compensated?

MR. HOUFF: Would you restate your question, please?

* * * *

[Tr. 138] BY MR. CLARK:

Q. If no one is going to fall through the cracks, why does that provision have any meaning to you at all?

MR. HOUFF: You are arguing with the witness.

THE WITNESS: Why do we have it sitting in our Constitution that the head of the House of Representatives becomes the President

of the United States if the four people ahead of him die, and it's never going to happen?

I mean, surely something crazy may happen. When that becomes a real problem, then we have a provision for it. That's what's going on here.

BY MR. CLARK:

Q. Because you don't have all the answers; isn't that true?

MR. HOUFF: Objection.

BY MR. CLARK:

Q. There are things that could happen, there are cases that could come up that you can't sit here and possibly anticipate?

[Tr. 139] A. I've been asked to a reasonable degree of medical certainty if I believe this covers the cases that are out there, and if this will provide an appropriate compensation, and not allow people to fall through who should be compensated.

My answer to that is that this is a good document, that should address this issue, and that the exceptional pathway provides an additional guarantee that if someone feels they have not been treated properly, by this pathway they can appeal through that pathway.

I believe overall this will result in a far more uniform and far more fair compensation to people with injury than the current adversarial system does.

Q. Which we've already established you don't have any basis for your understanding as to what people are paid in personal injury asbestos actions; isn't that correct?

MR. HOUFF: Objection. That mischaracterizes —

BY MR. CLARK:

Q. What's the basis for your [Tr. 140] understanding as to how much people are paid in personal injury asbestos actions brought in the traditional system?

A. Only informal and approximate type conversations, and I don't really have hard numbers about specific individuals or diagnoses and what was compensated. That's never been revealed to me.

Q. What other concerns did you have? Let's just keep going through.

MR. HOUFF: I object to —

BY MR. CLARK:

Q. Would it be fair to say all of the concerns you had were that people were going to be paid who shouldn't be paid?

A. I was pointing out I thought this was a generous settlement, and to counterbalance the justification for creating a generous settlement, the defendants are obviously going to encounter a much less onerous burden of defense and workup of their cases, and that probably justifies setting up this kind of settlement and making it fair to both sides.

However, I did not have concerns [Tr. 141] based on individuals who should be compensated that would fall through the crack.

Q. Let me restate my question.

Isn't it true that the only concerns that you had were that people were going to be paid who you didn't believe may be entitled to compensation?

Would that be a fair statement?

MR. HOUFF: Objection.

You can answer it.

THE WITNESS: Yes.

BY MR. CLARK:

Q. Give me some examples of people who you think — making reference to specific diseases and specific categories, who you think might get paid who shouldn't get paid.

MR. HOUFF: Objection.

THE WITNESS: A person who is a heavy smoker; they've been exposed to asbestos in a building trade where their exposure is not heavy, but who has a heavy smoking history and develops an adenocarcinoma of the lung and happens to have bilateral small calcified pleural plaques; that person would be compensated, and I don't believe that person —

* * * *

[Tr. 162] Q. Doctor, as to the criteria that has been discussed here in the document, would it be fair to say that over the last several years this is generally the type of criteria that you've been applying when you have been working on these cases for the asbestos industry?

A. The criteria in this document?

Q. Yes.

A. The criteria for what? For the diagnosis, you mean?

Q. Yes.

A. Because I don't get involved in compensation.

Q. No, I understand.

A. I only get involved in diagnoses.

The criteria I apply are probably — are not exactly the ATS consensus criteria, but they are very close to those.

Q. That's not what I'm asking you.

I'm asking you about the criteria in this document, the settlement stipulation, for the diagnosis of asbestosis.

[Tr. 163] Would it be fair to say that the criteria that are in the document, the settlement stipulation, are by and large essentially the same criteria that you've used for the last few years in determining whether these people have asbestosis that you are reviewing for the asbestos companies?

MR. HOUFF: Objection. You can answer.

THE WITNESS: I've already told you that these are generous criteria, and I use the ATS criteria. They are not identical to these.

So these are more lenient towards the plaintiffs than I believe represents the correct status.

BY MR. BARON:

Q. I'm not talking as to cancer. I'm talking as to asbestosis.

A. I'm talking asbestosis too.

They only use exposure, latency, 1/0 on a chest x-ray, and some modest functional data, pulmonary function test to diagnose. They miss all the other criteria that relate to it.

* * * *

DEPOSITION OF TY ANNAS

* * * *

[Tr. 14] A. Nothing that I'm aware of.

Q. So as of today, other than the diabetes, you feel like you are in good health?

A. I do.

Q. Have you noticed any problem — let me back up.

Your lawyer responded to some requests that we made about you, and I asked him for a copy of any medical bills that you had as a result of treatment for asbestos-related disease.

Have you incurred any such bills?

A. I don't have no bills, no.

Q. So as of today, you've not spent one red cent on any problem related to asbestos; right?

A. Not to my knowledge.

MR. RICE: For his health?

MR. BARON: Right.

BY MR. BARON:

Q. I'm just talking about your health.

A. Right.

Q. As of today, have you lost any [Tr. 15] wages as a result a result of your exposure to asbestos?

A. No, sir.

Q. As of today, can you think of any out-of-pocket loss that you've had as result of your exposure to asbestos?

A. Not from mine.

Q. So, Mr. Annas, would it be fair to say that you don't believe you've lost money at all as a result of your exposure to asbestos?

A. No, sir.

Q. Is that fair to say?

A. Not at this point in time.

Q. Well, I think I double-negated that one. Maybe I should ask it the right way, which would be unusual for me.

MR. RICE: That's true.

BY MR. BARON:

Q. Mr. Annas, let's take it back to the date of the filing of the lawsuit.

As of January 15, 1993, did you have any money lost to yourself as a result of your exposure to asbestos?

A. No.

Q. Now, as of January 15, 1993, did [Tr. 16] you authorize anyone to sue for money losses for yourself as a result of your exposure to asbestos?

A. No, I did not.

Q. So you, on January 15, 1993, had no interest in recovering money for yourself from the asbestos companies; is that right?

MR. RICE: For his money losses, you said?

MR. BARON: For his money losses.

MR. RICE: For his out-of-pocket losses?

BY MR. BARON:

Q. Just for any money losses that you have; is that right?

A. For myself.

Q. Right, for yourself.

Now, has any member of your family been injured as a result of exposure to asbestos?

A. Yes.

Q. Which one?

A. My wife of 43 years.

* * * *

[Tr. 36] suffering in her death, and I've got two children that's going to do the same thing.

Why shouldn't I be interested in it?

Q. I am not asking you about whether you were interested in asbestos.

I'm asking you about the lawsuit in Philadelphia. That's what I'm asking you about right now.

MR. RICE: And I think he was speaking to the lawsuit in Philadelphia.

BY MR. BARON:

Q. When I asked you earlier what was your reason for filing the lawsuit in Philadelphia, you told me that you wanted to do it before the money was all gone.

A. I felt there was a better way.

Q. And there had to be a better way.

A. Absolutely.

Q. I want to know what was the primary, the first top-of-the-list reason why you filed it.

A. What's going to happen to me?

Q. Well, when you say "you," you [Tr. 37] are worried about yourself; is that, then, the reason why you filed it?

A. And my children.

Q. So your reason for filing the lawsuit in Philadelphia is your concern about yourself and your family members?

A. And my friends who I worked with for many years.

Q. You said earlier that you were concerned about the money running out was another reason.

Is that one of the reasons that you filed or not?

A. Money drives everything.

Q. Money does drive everything, particularly in this case.

A. Exactly.

MR. RICE: it's obviously driving you, Mr. Baron.

THE WITNESS: And I think you should move on to another line of questioning.

BY MR. BARON:

Q. You don't want to answer any of my questions in this line of questions?

A. I think I've answered them.

* * * *

[Tr. 53] MR. RICE: Just against the CCR defendants?

MR. BARON: Yes.

MR. RICE: You are speaking lawsuits versus claims?

MR. BARON: Yes.

MS. WHITE: Objection.

THE WITNESS: If the courts apply what's in that package, I have no problem.

BY MR. BARON:

Q. Cutting off their rights to file a suit?

A. Exactly.

Q. Do you know that somebody that has pleural plaques that is not impaired gets zero money under this settlement?

A. Yes.

Why should they?

Q. Excuse me?

A. Why should they?

Q. Why should they get money?

A. Yeah. They are not injured.

* * * *

[Tr. 61] Q. What I want to know is did anyone from Ness Motley tell you that they had a contract with CCR such as the one I've just described to you?

A. I can't say yes to that because I am not sure.

Q. Mr. Annas, as we sit here today, do you believe that the CCR people owe you any money today?

A. I hope they don't ever owe me any money.

Q. On January 15, 1993, was it your intention to sue CCR for money damages for yourself, for your own injuries?

A. No.

MR. BARON: That's all I have. Thank you very much, Mr. Annas, and I'm sorry to bother you.

MR. RICE: Any other by any other counsel?

MR. CLARK: Yes, sir.

* * * *

[Tr. 69] Q. In 1992, had your wife manifested a mesothelioma?

A. In 1992 — what does "manifest" mean?

Q. The doctors were telling you that she had mesothelioma?

MR. BARON: Objection. Leading.

THE WITNESS: Yes.

BY MR. RICE:

Q. Do you believe you or your wife had more asbestos exposure throughout your career?

A. I certainly had. I worked in it.

Q. You, yourself, after watching what your wife went through, are you concerned that the asbestos that you inhaled throughout your career that's in your lungs may be causing damage and may continue to cause damage in the future?

MR. BARON: Objection. Leading.

THE WITNESS: I certainly am concerned.

BY MR. RICE:

Q. Do you have any concerns about [Tr. 70] your future health as it relates to your occupational exposure to asbestos?

A. Yes.

Q. Do you have any concerns for your children, who were living at home at the same time your wife was washing your clothes, et cetera?

A. Yes.

Q. Now, in 1992 you told Mr. Baron that you met with Mr. Lyle and discussed with him the concepts of a better way?

MR. BARON: Objection. Leading.

THE WITNESS: Yes.

BY MR. RICE:

Q. Did you at that time tell Mr. Lyle anything about your support or belief that this would be a better way?

MR. BARON: Objection. Leading.

THE WITNESS: Yes.

BY MR. RICE:

Q. Shortly after January 1993, did you receive a packet of information from Mr. Lyle that included a stack of documents?

MR. BARON: Objection. Leading.

THE WITNESS: Yes.

* * * *

[Tr. 77] BY MR. BARON:

Q. Mr. Annas, do you subscribe to the Wall Street Journal?

A. No, I can't afford any paper. I don't take a newspaper.

Q. So then you've never seen anything about this lawsuit in the newspaper, have you?

A. I got a — I had — down at my daughter's there was — about three weeks ago, [Tr. 78] maybe, I glanced at the paper she had there on the floor and this thing leaped out. It was one of these intervenor things.

Q. It was an intervenor thing? What was an intervenor —

A. One of the local lawyers.

Q. Some local lawyer put something —

A. Had, yeah. That's all I know.

Q. Because you don't subscribe to a newspaper, you would not have seen an advertisement in the newspaper, then, would you, sir, that was put in there by the court concerning this case?

A. No.

MS. WHITE: Objection.

BY MR. BARON:

Q. Have you seen anything about this case on television?

A. I don't watch much television.

Q. You don't watch much television? So you haven't seen anything about this case on TV, have you?

A. No.

* * * *

[Tr. 91] Q. You know Armstrong World Industries, do you not?

A. Yes, sir.

Q. Do you know how much insurance they have got?

A. I have no idea.

Q. Do you know how much money the company is worth?

A. No, sir.

Q. Do you know GAF Corporation?

A. Yes, sir.

Q. Do you know how much money they have got?

A. No.

Q. Do you know how much insurance they have got?

A. No. Why should I? I'm just a layman.

Q. Have you ever instructed a lawyer to sue anyone for your mental anguish for your own condition?

A. No. And I hope I never have to.

Q. Have you ever instructed a [Tr. 92] lawyer to seek damages for you for your own mental anguish?

A. No.

Q. When you signed the release for CCR, did you have to release any claim that you yourself might get in the future?

A. On my case?

Q. Yes.

A. I don't have a suit.

Q. You've not filed a suit for your own damages, have you?

A. No. No.

Q. Now, I asked you earlier about any medical expense, and I think you've told me you've had none so far?

A. The only expense I have is my yearly physical.

Q. Who pays for that?

A. I do.

Q. How much do you pay a year out of pocket, that's not covered by insurance?

A. \$600 first.

Q. And what have you been paying recently per year?

A. I imagine it's going to be \$750.

[Tr. 93] Q. When is the last time you had a full physical exam?

A. Last year.

Q. Was that limited to asbestos or did you have a full exam?

A. It was a real physical. You know what that is.

Q. That's every piece.

Have you ever had an exam just to determine whether you have asbestos-related disease?

A. Only the x-rays.

Q. How much do the x-rays cost; do you know?

A. About \$125.

Q. Do you pay for that out of pocket, or do you have somebody that pays for it for you?

A. Well, I'm on Medicaid, and I pay it, but they file the claim.

Q. And then it gets reimbursed; is that right?

A. Or they refuse it.

Q. Or they refuse it?

A. Whatever.

[Tr. 94] Q. So as far as asbestos-related expenses, from now until forever, if you don't develop any asbestos-related disease, do you think they will be small?

A. Let that register here a minute.

Q. Did you understand it?

Let me ask it a better way.

A. Until you put that last sentence in there.

Q. Let's hope and assume that you never develop an asbestos-related disease. All right?

A. Yes.

Q. If that is the case, would you expect, then, that the asbestos companies don't owe you anything?

A. Not me.

MR. BARON: That's it. Thank you very much, Mr. Annas. I appreciate it.

* * * *

DEPOSITION OF LAWRENCE FITZPATRICK

* * * *

[Tr. 74] We did try to have a green card program, albeit it wasn't tremendously successful.

Prior to 1991, we had announced an administrative claim program where we offered to take claims directly from individuals and they didn't have to be represented by a lawyer.

Those are some of the things we had done to try and deal with the pleural problem.

Q. By the end of 1991, did you personally believe you were making a lot of headway in dealing with the pleural problem?

A. I did not.

Q. Now, had you also been active in the Legislature, in Congress, to try to get some relief?

A. The CCR had not been active in Congress in trying to get legislative relief.

* * * *

[Tr. 96] BY MR. BARON:

Q. I will ask you if you have seen this particular document before and whether you authorized Mr. Aldock to send it to Professor Brickman.

A. In answer to your questions, I do recognize the document entitled "A Critical Analysis of the Report of the Ad Hoc Committee on Asbestos Litigation."

This is the document that we previously discussed. It was prepared by Shea & Gardner.

I don't specifically recall being asked for permission for this article to be sent to Professor Brickman, but again, that may have happened or it may not have happened, and I see no reason to withhold it from him.

Q. What was the purpose of authorizing this report?

A. Well, the Renquist Committee had issued a report. There were some things in the report that we agreed with and there were others that we did not agree with.

To the extent that we did not agree with items in that report, we felt it was [Tr. 97] important that we get our comments in writing.

Q. If you will turn with me to the table of contents, there is a discussion under paragraph Roman numeral II:

"The report is premised on a fundamental misunderstanding of the asbestos litigation and its current problems."

Do you see that?

A. Yes, sir.

Q. Under subtopic (4) under Roman numeral II, (b), there is a discussion of class actions.

Do you see that?

A. Yes, sir.

Q. Do you know why Mr. Aldock made the decision to discuss class actions in this report?

A. Yes.

Because the Rehnquist Committee Report had referenced class actions, so I think Mr. Aldock felt it appropriate to respond in this paper.

Q. Would it be fair to say that Mr. Aldock concluded that class actions are inappropriate in mass tort cases, other than go [Tr. 98] through this with you?

A. No, sir.

I think it would be fair to say that Mr. Aldock concluded that litigation class actions are unfair to asbestos defendants and unwise on policy grounds.

Q. Unwise to who? Unwise to the judicial system?

A. That's correct.

Q. So if a class action is a litigation class, would it be the view of CCR that that would be unwise, but if it was a settlement class, that would be wise?

A. Yes. We draw a distinction between settlement class actions and litigation class actions.

Q. Can you describe to me what the difference is?

A. Well, I think there are many differences.

One of the main differences is it has been our experience that litigation class actions, such as the ones that have happened down in Texas, don't solve the problem; they exaggerate the problems.

[Tr. 99] Q. I'm going to stop you for a minute because we didn't communicate on that question and answer.

A. I'm sorry.

Q. How would you define, in your own mind, to an untrained observer such as me, what the difference is between a litigation class action and a settlement class action?

A. Well, a litigation class action is filed and involves litigated issues.

A settlement class action is filed merely for the purposes of accomplishing an agreement upon settlement.

I think there is a major difference there.

Q. So that I can understand it:

A settlement class action, in your mind, is one where all of the issues have been agreed upon before the lawsuit is filed?

MR. HANLON: Objection to the form of the question.

BY MR. BARON:

Q. Such as Carlough; correct?

A. Not necessarily.

* * * *

[Tr. 114] Q. Would it be fair to say that one of the topics on which there was a disagreement among the plaintiffs lawyers was whether pleural cases should be compensated?

A. Yes.

Q. So did you then try to find lawyers who you felt might be more sympathetic to your position in starting up this settlement class action?

A. No.

Q. Did you pick lawyers who you knew would never agree to exclude pleural cases when you decided to start negotiating this CCR deal?

A. No.

We decided to target two law firms for our initial settlement discussions. Those firms were the firms of Ness Motley and Greitzer & Locks.

We picked them for a number of reasons.

Gene Locks and Ron Motley were the co-chairpersons of the plaintiffs attorneys' MDL Steering Committee.

Both the firm of Ness Motley and [Tr. 115] Greitzer & Locks had traditionally been leaders among the asbestos plaintiffs bar in a variety of forms, like the Manville bankruptcy and the UNARCO bankruptcy and several others.

Ness Motley had probably the most number of cases, when its cases and all its affiliates were taken into account, and was also active in their Asbestos Litigation Group.

So I think for those reasons, we decided to initiate discussions with Greitzer & Locks and Ness Motley at that time.

Q. When you say "we picked them," do you mean that you went through several other names in going through the process of selection?

A. We didn't get to that point.

We initially decided that we should focus on those two as leaders of the plaintiffs bar.

If we were able to convince them to deal with us, we felt that other asbestos plaintiffs attorneys would think that the deal was fair because Ness Motley and Greitzer & Locks thought the deal was fair.

Q. Now, you had had experience [Tr. 116] before with Ness Motley in terms of negotiating the earlier global resolution; right?

A. Well, in terms of attempting to negotiate the earlier global resolution, yes, sir.

Q. Had you also had experience with Greitzer & Locks in trying to deal with the earlier global resolution?

A. Well, Greitzer & Locks had been involved in those discussions, but my general impression was that their emphasis was more on case management during the course of those discussions as opposed to settlement, if that makes sense.

Q. What was the approach that CCR decided to make to these two law firms? How was it accomplished?

A. Well, we had an initial series of meetings in early 1992, perhaps late 1991, with Ness Motley and with Greitzer & Locks.

Q. Before those initial meetings, did CCR have in mind generally a framework for how they wanted this class structured?

A. Yes, sir, I think we did.

Q. And did CCR have in mind that [Tr. 117] one of the principal things that it was looking for was deferral of pleural cases?

A. Yes.

Q. So before Greitzer & Locks or Ness Motley got involved in the deal, CCR had decided that this might be a way that they could accomplish what they hadn't been able to accomplish before, which was a national deferral of pleural cases against CCR?

MR. HANLON: Objection to the form.

BY MR. BARON:

Q. Right?

A. We were attempting to find a more rational way to deal with the pleural case problem through these negotiations.

Q. Prior to attempting these negotiations with Ness Motley and Greitzer Locks, had anyone at CCR or on behalf of CCR discussed CCR's belief that there were too many pleural cases with Judge Weiner?

MR. HANLON: Objection to the form.

THE WITNESS: Yes.

* * * *

[Tr. 341] Q. All right. As best you can do.

A. All right.

Many of these agreements use the language as found in paragraph 5, "Law firms will not file any future asbestos personal injury claims."

Q. Okay.

A. After many of these agreements were signed, there was an ABA advisory ethical opinion that arguably had some bearing on these agreements; I think people could differ as to whether it had any bearing at all.

But when that opinion came out, out of an overabundance of caution, we decided to make a change from the language that said, "will not file" to basically language that said, "will recommend."

We didn't view it as significant, because we really didn't view these kinds of provisions as legally binding documents, if you will. They were more of a commitment, a good faith commitment as to how these people were going to deal with us in the future.

Q. Why did you not view these [Tr. 342] documents as legally binding?

A. I don't see how you can sue on a document like this to enforce it.

The remedy, if somebody wants to breach an agreement like this, is to deal differently with them in the future, and is not to sue.

Q. If they weren't enforceable agreements, why did somebody go through the trouble of having everybody sign one?

A. We wanted to memorialize in writing their commitment to the future. It was a moral commitment, if you will.

Q. Did you expect them to abide by that moral commitment?

A. Sure. And if they did not, we would have dealt with them differently in the future.

Q. In what way?

A. We would not have trusted them and would have been less reluctant to deal with them.

MR. MOTLEY: You mean more reluctant?

THE WITNESS: I'm sorry. More

* * * *

**FITZPATRICK DEPOSITION EXHIBIT 5:
A CRITICAL ANALYSIS OF THE
REPORT OF THE AD HOC COMMITTEE
ON ASBESTOS LITIGATION**

* * * *

The issue of "general causation" is *not* a significant issue in many asbestos cases, for there is little debate that, at least at some exposure levels, asbestos exposure may cause certain diseases. To be sure, there can be a general causation question in some asbestos cases, such as, for example, whether there is indeed a causal relationship between asbestos exposure and colon cancer, or between chrysotile fiber and mesothelioma.¹⁷ The usual causation issue in the vast majority of asbestos cases, however, is specific causation — that is, does this plaintiff in fact have an asbestos-related disease due to exposure to this defendant's products. Included within this specific causation determination are the issues of 1) whether the plaintiff's condition is asbestos-related at all (*e.g.*, are the plaintiff's breathing problems due to asbestosis or emphysema?); and 2) if so, whether exposure to a particular defendant's products was a substantial factor in causing the plaintiff's condition.

Second, the Report may be suggesting that Congress should eliminate these specific causation problems by declaring that any exposure to asbestos — no matter how small — shall be deemed to have caused a compensable injury. But that determination would flatly contradict the substantial body of medical and scientific opinion (discussed below) that low levels of exposure to asbestos (particularly to chrysotile fiber) do not represent a meaningful health hazard. Moreover, any such Congressional determination would revolutionize the requirement of proximate causation in torts. In effect, such a determination would make every individual in the

¹⁷ Such general causation arguments are only raised in instances where there is significant scientific and medical authority to support them. We see no justification for any proposal that would resolve these controversies in favor of plaintiffs.

United States a potential plaintiff, inasmuch as we all are exposed to and inhale asbestos fibers every day.

Finally, even if Congress declared asbestos "absolutely dangerous" so that every exposure would be deemed to cause injury, the defendants would still not be "absolutely liable" unless Congress were also willing to alter even further the law of products liability in every state. As explained above, liability under strict liability or negligence principles in an asbestos case generally requires not only a showing that the product caused harm, but also a showing that the supplier knew or had reason to know of the product's hazards, that a warning on the product was necessary and any warning given was inadequate, and that a different warning would have made a difference. Thus, to impose "absolute liability" upon asbestos defendants, based on the mere showing of some exposure to those defendants' products, would require a fundamental change in the law of all fifty states, and would represent a major alteration in the principles of tort liability.

In sum, the Report has two fundamental oversights — a failure to discuss the problem of unimpaired or meritless claims and a failure to acknowledge that defendants have viable defenses to many asbestos claims. The Report also shows a remarkable misunderstanding of the legal issues in asbestos cases. The reasons for these oversights and misunderstandings may be found in the other inaccuracies and misstatements that pervade the Report, which we now discuss, in reviewing the Report section-by-section.

B. Specific Inaccuracies and Misstatements

1. "Introduction"

a. In this section, the Report characterizes the asbestos problem as "a tale of danger known in the 1930s," with "exposure inflicted upon millions of Americans in the 1940s and 1950s." This characterization is both unfair and untrue. While, with hindsight, it is always possible to argue what "should" have been known, actual knowledge of the hazards of asbestos has emerged slowly over a long period of time, as acknowledged experts on the health effects of asbestos have written. For example, A. Churg and F. Green, *Pathology of Occupational Lung Disease* 216 (1988), contains a bar chart showing when the link between asbestos and certain diseases was first "noted," was first

"proposed," and was first "generally accepted by the medical community." This chart thus shows the evolutionary nature of the acceptance of a link between asbestos and various diseases. A similar point is made in H. Weill and J. Hughes, "Asbestos as a Public Health Risk: Disease and Policy," 1986 *Ann. Rev. Pub. Health* 171, 174 ("Clearly, knowledge of the types of disease and the circumstances of causal asbestos exposure did not appear suddenly, but evolved over several decades.") Indeed, even Dr. Selikoff has acknowledged that, as of the 1960s, the link between asbestos and certain diseases "rested on scattered reports of small numbers of cases," that the link to cancer was "contested," and the dangers of the lower levels of exposures resulting from the "environmental controls proposed in the 1930s" was "not known." I. Selikoff & D. Lee, *Asbestos and Disease* 31 (1978).

Furthermore, apart from the issue of when it was generally accepted that there was any link between asbestos and certain diseases, knowledge of the dangers at lower levels of exposure became known even later. This is what Dr. Selikoff meant when, as quoted above, he stated that, in the 1960s, the effects on disease incidence of the "Environmental controls" instituted in the 1930s were "not known." This is also demonstrated by the fact that the Occupational Safety and Health Administration ("OSHA"), which first adopted a

* * * *

The statement that the number of asbestos claims "has not begun to crest" (Report at 7) is inaccurate, at least as far as claims for significant impairment are concerned. Thus, when it promulgated the current workplace exposure levels in 1986, OSHA noted that two prominent medical researchers had testified in the OSHA proceedings "that asbestosis mortality and severe asbestosis morbidity is on the decline" due to lowered workplace exposure levels in the past few decades, and that this view is corroborated by the works of other researchers, 51 Fed. Reg. 22624 (June 20, 1986).

The references to the number of claims filed in various courts is, in some respects, misleading. For example, the huge increase in the number of cases pending in the City of Baltimore (Report at 9) is caused partially by the fact that many cases have been filed in or transferred there by plaintiffs' counsel eager to take advantage

of a mass consolidation trial scheduled to begin in that jurisdiction in late April 1990. Similarly, the high number of filings in some other federal districts is caused by the fact that judges in those districts, such as Judge Parker in the Eastern District of Texas, have employed radical consolidation or class action techniques, such as in *Cimino v. Raymark Industries, Inc.*, C.A. No. B-86-0456-CA (E.D. Tex.), that are widely acknowledged to have significantly favored the plaintiffs. Such techniques naturally encourage hundreds or thousands of new claims to be filed in those districts.

b. "Delay." This section points out that asbestos claims can be highly complex with "an average of 20 defendants," "lengthy discovery," "[t]hirty or more legal issues," "complicat[ed] issues of causation," and "difficult" product identification issues (Report at 11). These complexities, however, just illustrate why a mass consolidation or collective trial of asbestos cases would be unmanageable, and why, because of their undifferentiated nature, such mass proceedings generally result in high verdicts for all claims, including many unmeritorious ones.

The Report lists several statistics concerning the *Cimino* case as an illustration of the complexity of in an asbestos case (Report at 11). It should be noted, however, that *Cimino* is hardly a typical example; it involved an attempt to resolve over 2000 claims in one consolidated trial.

c. "Costs." In discussing the high transaction costs of the recently concluded four plaintiff trial in Cleveland, Ohio (Report at 12-13), it should be noted that the trial resulted in complete defense verdicts in the three pleural cases (on the grounds that the claimants had no asbestos-related disease), and a plaintiffs' verdict of \$166,000 in the fourth case, a mesothelioma claim. *Mealey's Litigation Reports (Asbestos)* 19 (Dec. 14, 1990). Thus, it appears unlikely that these high transaction costs can be attributed to defense intransigence. Moreover, this trial shows that it can cost defendants a great deal to defend claims that are found to be without merit.

It is also somewhat misleading to highlight as typical the number of lawyers involved in *Cimino* and *In Re School Asbestos Litigation* (Report at 13). As noted above, *Cimino* was a massive

consolidation involving over 2000 claims, while *In Re School Asbestos Litigation* is an opt-out class action for asbestos property damage by school districts nationwide. Even the Brooklyn Navy Yard trial referred to in the same paragraph was a fairly large consolidation, involving over 60 claims.

It is also unfair to note that one 1984 study reported that 37 cents of each dollar spent on the asbestos litigation goes to defense costs (Report at

* * * *

claimants, but may also leave inadequate funds for future claimants. No discussion of the high costs of asbestos litigation is complete without a discussion of plaintiffs' attorneys' fees. Indeed, one of the reasons that the CCR supports transfer of all pending asbestos cases to a single federal district is that such a transfer would enable the transferee court to scrutinize plaintiffs' attorneys' fee arrangements.

4. "Asbestos Litigation: Unsatisfactory Resolution"

a. "Consolidation." The Report notes (at 17) that "[c]onsolidations [in asbestos cases] * * * have met with the approval of the appellate courts." It should be noted, however, that the two decisions cited in support of this conclusion — *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492 (11th Cir. 1985), and *Van Buskirk v. Carey Canadian Mines, Ltd.*, 760 F.2d 481 (3d Cir. 1985) — involved consolidations of *four* and of *eleven* claims, respectively, that the four workers whose claims were consolidated in *Hendrix* "worked out of the same union hall * * * frequently on the same jobs * * * [with] exposure to asbestos-containing insulation products * * * during the same time frame," 776 F.2d at 1495-96; and that the eleven claims consolidated in *Van Buskirk* all involved workers from the same asbestos product manufacturing plant. 760 F.2d at 485. No appellate court has sanctioned the type of mass consolidation or collective proceeding advocated as a "back-up" recommendation by the Committee, and which the Committee correctly concluded could be instituted only with a change in current law.

b. "Class Actions." We discuss in detail in Part III below why mass consolidations or class action trials of asbestos claims are both unfair to the defendants and unwise on policy grounds. We

note, however, that the Report offers no support for its conclusion that "[v]irtually every federal judge who has tried to cope with a substantial asbestos docket" agrees that "aggregate or class proceedings" "with issues of liability and damages being resolved for the entire class or subclass" are needed (Report at 19). Indeed, other than Judge Parker in the Eastern District of Texas, no federal court has attempted such aggregate proceedings for asbestos personal injury claims.

Furthermore, it is unfair to list (*id.*) the advantages of such aggregate proceedings with no reference to the disadvantages. Disadvantages include (as discussed in Part III) submergence of defenses and individual issues, to the detriment of the defendants, with a significant skewing of the balance to the plaintiffs and a great increase in the defendants' liability.

The Report's discussion of the use of class actions in the asbestos or mass tort area is incomplete in several other respects. First, in *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 471 (5th Cir. 1986), one of two cases cited in the Report (at 20) where a court of appeals has sanctioned the use of a class action in asbestos cases, only a few issues were to be resolved on a class basis; individual issues for each class member were to be resolved after the class issues in "mini-trials" of seven to ten plaintiffs each. *In re School Asbestos Litigation*, 789 F.2d 996 (3d Cir. 1986), the other asbestos class action cited in the Report, involves asbestos property damage claims, has not yet been tried, and, in affirming the class certification order, the Third Circuit noted its "misgivings on manageability" (*id.* at 998).

Second, the Fifth Circuit did not mandamus Judge Parker's attempted class action in *Cimino* simply because "Texas law required trial of individual claims * * *" (Report at 21). Instead, the court of appeals found that "[t]here are too many disparities among the various plaintiffs for their common concerns to predominate," that the procedures ordered by the district court "may alter the liability of the defendants in fundamental ways," and that those procedures "comprise something other than a trial * * *". It is called a trial, but it is not." *In re Fibreboard Corp.*, *supra*, 893 F.2d at 711-12.

Finally, the Report states (at 21) that "[i]n other mass tort actions, class action proceedings have been used successfully to reach disposition," citing class certification decisions in the Bendectin and Agent Orange litigation. But the Report fails to note that the class certification order in the Bendectin proceedings it cites was reversed on mandamus, *In re Bendectin Products Liability Litigation*, 749 F.2d 300 (6th Cir. 1984); and that the class certification order in the Agent Orange litigation was upheld on appeal *only* because of "the centrality of the military contractor defense" in that litigation. *In re Agent Orange Product Liability Litigation*, 818 F.2d 145, 151, 166 (2d Cir. 1987). Indeed, the Second Circuit expressly held that "[w]ere this an action by civilians based on exposure to dioxin in the course of civilian affairs," and thus without the military contractor defense, "we believe certification of a class action would have been error" (*id.* at 166).¹⁸

c. "Judicial Panel on Multidistrict Litigation." As set forth in the CCR's recent response to the order to show cause filed before the MDL Panel (March 18, 1991), transfer to a single federal district cannot, under present law, achieve mass consolidation or class action trials for asbestos claims; instead, the transferee court's powers are limited to pretrial proceedings only. The Committee is incorrect, however, that, whatever the MDL Panel orders, "it will still be necessary to provide a mechanism for resolving these [asbestos] trials in an expeditious manner" (Report

¹⁸ To the extent that this section of the Report, or the Report's back-up recommendation for mass consolidations or collective proceedings in asbestos cases, is intended to endorse the approach in *Cimino v. Raymark Industries, Inc.*, C.A. No. B-86-0456-CA (E.D. Tex.), that endorsement is most inappropriate. *Cimino* is still pending in the district court and, absent a settlement, most surely will be appealed. The judge who issued the legal rulings in *Cimino* is a member of the Committee, and the Judicial Conference represents the entire judiciary that will adjudicate the appeals from the *Cimino* rulings. Accordingly, an endorsement of *Cimino* by the Committee or the Conference at this time seems questionable. See Code of Judicial Conduct, Canon 3(b)(9) ("A judge shall not, while a proceedings is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness * * *").

at 22). Instead, as set forth in the CCR's MDL response, there are five measures that the transferee court could order that would provide immediate and substantial relief to the parties and the courts: 1) implement a national program for deferral of unimpaired claims; 2) sever all claims for punitive damages; 3) adopt a uniform case management plan to control case flow and to facilitate settlement; 4) supervise the reasonableness of contingent attorneys' fees; and 5) establish a model for, and a forum for coordination with, the state and bankruptcy courts in all these respects. Such steps by the transferee court would go a long way towards eliminating the backlog of asbestos claims in the federal and state courts, and would also encourage the current efforts at a consensual national settlement of all asbestos claims.

d. "Collateral Estoppel." The Report suggests that use of collateral estoppel in asbestos cases "would enable trial courts to deal more efficiently and effectively with the asbestos caseload * * *" (Report at 23). One major difficulty, however, in applying collateral estoppel in the asbestos litigation is that, as discussed in Part III below, many of the most crucial issues in any asbestos case are the individual issues of causation and damages. See generally M. Green, "The Inability of Offensive Collateral

* * * *

asbestos claims be resolved through mass consolidations or collective trials. As we now show, this "back-up" recommendation would be both unfair to the defendants, and would also be unwise on policy grounds.

III. Mass Consolidation or Collective Trials Would Be Both Unfair to the Defendants and Ill-Advised.

A. Unfairness to the Defendants

The primary reason that asbestos claims cannot be fairly handled in mass proceedings is because, at bottom, each claim is different with respect to most elements of each plaintiff's cause of action. As the MDL Panel has observed, the issues that predominate in asbestos personal injury litigation are individual, not

common, issues: injury, medical causation, and damages.¹⁹ Just last year the Fifth Circuit reaffirmed that "[t]here are too many disparities among the various [asbestos] plaintiffs for their common concerns to predominate." *In re Fibreboard Corp.*, *supra*, 893 F.2d at 712. The problem with trying such issues in a consolidated trial is that, by their undifferentiated nature, such trials sweep along to large verdicts many unmeritorious cases. Further, such trials unfairly skew the balance set up by the tort system by effectively depriving defendants of their ability to focus the jury's attention on the individual issues. As the Fifth Circuit observed in *In re Fibreboard*, "[t]o create the requisite commonality for [a class action or consolidated] trial, the discrete components of the class members' claims and the asbestos manufacturers' defenses must be submerged" (*id.*). Such procedures thus "rework[] the substantive duty owed by the manufacturers" (*id.*). Judge Hogan made a similar point in his dissenting statement to the Report:

"[U]se of class action 'collective' trials * * * of asbestos cases * * * is a novel and radical procedure that has never been accepted by an appellate court. It has been challenged as being constitutionally suspect in denying defendants their due process and jury trial rights as to individualized claimants, as well as conflicting with the court's obligation to apply state law. It would establish a new form of tort liability with far reaching ramifications to other mass tort cases." (Report at 41.)

It is essential to observe that many asbestos claims are not meritorious as to these individual issues, with the result that defendants continue to win outright defense verdicts in many cases tried individually or in small groups with minimal judgments in others.²⁰ Many claims involve no injury or minimal injury; others involve injury that is not asbestos-related; others involve exposure to products manufactured by non-defendants; others involve contributory fault or other situations where warnings would have

¹⁹ *In re Asbestos & Asbestos Insulation Material Products Liability Litig.*, 431 F. Supp. 906, 909-10 (J.P.M.L. 1977).

²⁰ See discussion of the defense verdicts won by defendants represented by the ACF or the CCR at p. 15, above.

made no difference; and others involve cases barred by the statute of limitations. Indeed, there are examples of hundreds or even thousands of unmeritorious cases being identified and dismissed.²¹

It has repeatedly been held that these individual issues cannot be avoided by artifice or short cut without unwarranted infringement of the defendants' rights. For example, efforts to impose market share liability to eliminate the need for proof of individual causation have been rejected by every court to consider the matter.²² Likewise, bids to displace state tort law — with its requirement of individual proof of each element for each plaintiff — through the creation of federal common law have been uniformly rebuffed.²³ And "procedural" efforts to short-circuit the

²¹ See, for example, the discussion of the dismissals of tireworker and other asbestos claims at pp. 12-13, *supra*.

²² Federal court decisions include *White v. Celotex Corp.*, 907 F. 2d 104, 106 (9th Cir. 1990) (Arizona law); *Bateman v. Johns-Manville Sales Corp.*, 781 F.2d 1132, 1133-34 (5th Cir. 1986) (Louisiana law); *Blackston v. Shook & Fletcher Insulation Co.*, 764 F.2d 1480, 1483 (11th Cir. 1985) (Georgia law); *University System v. United States Gypsum Co.*, 1991 U.S. Dist. LEXIS 1191 (D.N.H. 1991); *Marshall v. Celotex Corp.*, 651 F. Supp. 389, 392-94 (E.D. Mich. 1987); *Vigilto v. Johns-Manville Corp.*, 643 F. Supp. 1454, 1460-65 (W.D. Pa. 1986), *aff'd mem.*, 826 F.2d 1058 (3d Cir. 1987); and *In re Related Asbestos Cases*, 543 F. Supp. 1152, 1158 (N.D. Cal. 1982).

State court rulings include *Gaulding v. Celotex Corp.*, 772 S.W.2d 66, 70-71 (Tex. 1989); *Mullen v. Armstrong World Indus., Inc.*, 246 Cal. Rptr. 32, 35-38 (Ct. App. 1988); *Celotex Corp. v. Copeland*, 471 So. 2d 533, 536, 539 (Fla. 1985); *In re Asbestos Litig.*, 509 A.2d 1116, 1118 (Del. Super. Ct. 1986); *Leng v. Celotex Corp.*, 554 N.E.2d 468, 469-71 (Ill. App. Ct. 1990); *Sholtis v. American Cyanamid Co.*, 568 A.2d 1196, 1203-05 (N.J. Super. Ct. App. Div. 1989); *Goldman v. Johns-Manville Sales Corp.*, 514 N.E.2d, 691, 699-702 (Ohio 1987); and *Case v. Fibreboard Corp.*, 743 P.2d 1062, 1064-67 (Okla. 1987).

²³ See *Jackson v. Johns-Manville Sales Corp.*, 750 F.2d 1314, 1323- (continued...)

adjudication of exposure, causation, and injury for each individual plaintiff have been rejected as well.²⁴

In this regard, the "averaging" and "extrapolation" procedures recently ordered by Judge Robert Parker in *Cimino v. Raymark Industries, Inc.*, Civil Action No. B-86-0456-CA (E.D. Tex.) — termed "the most radical solution" by the Report (at 21) — are far beyond the courts' legitimate authority. Under those procedures, the court tried certain "sample" cases representing five disease categories, computed the "average" verdicts in each of the disease categories, and then awarded the remaining over 2000 plaintiffs, whose cases were not tried as to exposure or medical issues, compensatory damages equal to the average verdicts in the sample cases. Plainly, those procedures do not comport with either the letter or the spirit of the Fifth Circuit's *Fibreboard* opinion, which set aside a similar set of procedures as violating both *Erie* and the constitutional separation of powers. 893 F.2d at 709-11 (5th Cir. 1990). In any event, it has repeatedly been held in cases involving large numbers of individual claims that a defendant's right to due process bars the calculation and award of damages based upon the trial of sample cases followed by such "averaging" and "extrapolation" techniques, regardless of the asserted policy reasons for doing so.²⁵ Such procedures also impermissibly deprive

²⁴ (...continued)

27 (5th Cir. 1985) (*en banc*); *Jackson v. Johns-Manville Sales Corp.*, 781 F.2d 394, 397 n.3, 415 (5th Cir. 1986) (*en banc*); *In re Fibreboard Corp.*, 893 F.2d 706, 711 (5th Cir. 1990); *In re School Asbestos Litig.*, 789 F.2d 996, 1007 (3d Cir. 1986); *Wamrock v. Celotex Corp.*, 793 F.2d 1518, 1528 (11th Cir. 1986); *Blackston v. Shook & Fletcher Insulation Co.*, 764 F.2d 1480, 1485-86 (11th Cir. 1985); see also *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 378 (3d Cir. 1990).

²⁵ E.g., *In re Fibreboard Corp.*, *supra*.

²⁵ See *Windham v. American Brands, Inc.*, 565 F.2d 59, 72 (4th Cir. 1977) (*en banc*); *Kline v. Coldwell, Banker & Co.*, 508 F.2d 226, 236 & n.8 (9th Cir. 1974); *In re Hotel Telephone Charges*, 500 F.2d 86, 89-90 (9th Cir. 1974); *Eisen v. Carlisle & Jacquelin*, 479 F.2d (continued...)

defendants of, among other things, their Seventh Amendment jury trial rights.²⁶

Cimino may best illustrate the unfair results that can occur in a mass consolidation. Under the procedures in *Cimino*, every one of the over 2000 non-sample claimants will receive a judgment equal to the average verdicts in the sample cases; no claims of the non-sample claimants will be found without merit.²⁷ In addition, the average verdicts in the disease categories are very high; for example, the average verdict to be applied to each claimant with pleural changes is \$558,900, a figure far in excess of what pleural claimants have received around the country in cases that were not tried on a mass or aggregate basis. Moreover, the oddity of the average verdict for pleural claims is illustrated by the fact that it exceeds the average verdict for lung cancer claims (\$545,200), again a result inconsistent with results around the country in cases not tried in aggregate proceedings.²⁸

It should also be noted that even the questions that are sometimes asserted to be common in asbestos cases — like the

²⁵ (...continued)

1005, 1013-14, 1017-18 (2d Cir. 1973); *vacated on other grounds*, 417 U.S. 156 (1974); *In re Industrial Gas Antitrust Litig.*, 100 F.R.D. 280, 301 (N.D. Ill. 1983); *Wilcox Dev. Co. v. First Interstate Bank*, 97 F.R.D. 440, 446 (D. Or. 1983); *Al Barnett & Son, Inc. v. Outboard Marine Corp.*, 64 F.R.D. 43, 55 (D. Del. 1974).

²⁶ See generally *Granfinanciers, S.A. v. Nordberg*, 109 S. Ct. 2782 (1989); *Beacon Theatres v. Westover*, 359 U.S. 500, 508 (1959) (Seventh Amendment guarantees "a full jury trial of every * * * issue" in a case at law). Concerns about efficiency or convenience provide no excuse for infringements on the Seventh Amendment. See *Granfinanciers, S.A.*, 109 S. Ct. at 2802 n.18; *Pernell v. Southall Realty*, 416 U.S. 363, 384-85 (1974); *Reiner v. New Jersey*, 732 F. Supp. 530, 533-34 (D.N.J. 1990).

²⁷ The sample claimants, however, will each receive the verdict rendered in their actual cases.

²⁸ The average verdicts for the five disease categories in *Cimino* are set forth in *Mealey's Litigation Reports (Asbestos)* 11 (Dec. 3, 1990).

alleged unreasonable dangerousness of asbestos-containing products and each defendant's purported knowledge of particular dangers to certain plaintiffs during specific periods of time — are only "common" as to narrow groups of cases. Asbestos litigation involves a wide array of products which, in varying conditions and at varying locations, were subjected by varying techniques to many different kinds of uses or applications. See *Gideon v. Johns-Manville Sales Corp.*, 761 F.2d 1129, 1145 (5th Cir. 1985) ("[A]ll asbestos-containing products cannot be lumped together in determining their dangerousness.") To fairly try those issues, therefore, it is necessary to make a separate determination, for each permutation of these variables, as to whether sufficient dust could be produced to cause injury or disease; if so, how long such exposure would have had to occur to potentially cause each alleged kind of malady and when each defendant knew or should have known of these dangers. The issue of whether adequate warnings were given would raise additional factual variations. Here too, efforts at radical streamlining techniques, such as the use of collateral estoppel, stare decisis, or judicial notice, have been rejected because they would be unfair to defendants.²⁹ The need to divide these "common issues" so finely raises the separate issue of the manageability of a mass proceeding.

Furthermore, even if these limited "common" issues could be handled on a consolidated basis, such a trial would not substantially improve efficiency or advance the resolution of these cases. As noted above, individual issues predominate. And that is especially true in practice, since many courts employ "reverse bifurcation" to first try the individual issues of injury, medical causation, and damages — which often results in either a defense verdict or settlement — and hence do not spend time trying the supposedly "common" issues.

²⁹ See *Hardy v. Johns-Manville Sales Corp.*, 681 F.2d 334, 341-48 (5th Cir. 1982) (collateral estoppel and judicial notice); *Harrison v. Celotex Corp.*, 583 F. Supp. 1497, 1502 (E.D. Tenn. 1984) (collateral estoppel); *v. Miguez v. Fibreboard Corp.*, 662 F.2d 1182, 1187-89 (5th Cir. Unit A 1981) (stare decisis).

Another significant manageability problem in any national consolidation would be the requirement to apply fifty varying state laws. As noted above, state law applies in these diversity cases, and efforts to concoct federal common law have been rejected. Furthermore, in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 814-23 (1985), the Supreme Court held that due process prohibits a forum state from applying its substantive law to a nonresident plaintiff's claim absent a "significant contact or significant aggregation of contacts" between the forum state and the plaintiff's claim. Since the vast majority of asbestos cases will have no significant contact to whatever particular forum is chosen for the consolidated trial, due process will require that the forum apply the laws of all fifty states and the District of Columbia.

This requirement to apply all fifty state laws will lead to immense manageability problems. As even Judge Parker has recognized, "You have to have a uniform set of rules if you are going to have a National Class. You can't have 50 sets of rules."³⁰ Indeed, under similar (though less complex) circumstances, courts have found that the need to apply the varying laws of multiple states in a products liability lawsuit precludes a finding of commonality, not to mention one of manageability.³¹

A. Mass Consolidations Would Be Unwise

Even if class or mass consolidation trials could be instituted, they would be ill-advised. As noted, such proceedings, as in

³⁰ *Linscomb v. Pittsburgh Corning Corp.*, C.A. No. 1:86-MC-456 (E.D. Tex.), 8-20-90 Tr. at 25.

³¹ See *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 725 (11th Cir. 1987), *aff'g Sanders v. Robinson Humphrey/American Exp., Inc.*, 634 F. Supp. 1048, 1067-69 (N.D. Ga. 1986); *Walsh v. Ford Motor Co.*, 807 F.2d 1000, 1016-17 (D.C. Cir. 1986); *In re Northern Dist. of Cal., Dalkon Shield IUD Products Liability Litig.*, 693 F.2d 847, 850 (9th Cir. 1982); *Walsh v. Ford Motor Co.*, 130 F.R.D. 260, 271-75 (D.D.C. 1990); *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 265 (S.D. Cal. 1988); *Osborne v. Subaru of America, Inc.*, 243 Cal. Rptr. 815, 819-22 (Ct. App. 1988); see also *In re School Asbestos Litig.*, 789 F.2d 996, 1010-11 (3d Cir. 1986) (expressing doubt as to manageability in light of varying state laws).

Cimino, have produced drastically inflated liability for the defendants. Thus, if such proceedings were instituted, both the verdicts and the settlements would become much higher.³²

Obviously, this would be grossly unfair to the defendants — each of which is not just some abstract legal entity, but rather a composite of its employees, suppliers, customers, communities, and investors. The unfairness and harm to the defendants and all of these related people would also likely soon result in injury to state court and future plaintiffs. In addition to the federal cases which were the concern of the Report, there are over 60,000 cases pending in the state courts, and undoubtedly there are future cases that will some day be filed in state or federal court. By producing artificially inflated judgments that would likely bankrupt at least some defendants, class action or mass consolidation proceedings in the federal court cases would leave less money for paying meritorious claims of at least some state court and future plaintiffs. This would be plainly unwise. Indeed, the Committee even recognizes that its recommendation for legislation to allow consolidation and collective trials of federal court claims, if enacted, "may prejudice the chances of plaintiffs in state court cases, as well as of future claimants, to obtain deserved compensation (Report at 36).

Conclusion

The Ad Hoc Committee properly recommended that Congress establish a nationwide administrative claims handling program for asbestos claims, with the dual objectives of "achieving timely and appropriate compensation" to

* * * *

³² Indeed, it has been observed that the kind of "extrapolation" techniques recently used in *Cimino* "would drastically increase the class action defendant's substantive liability." *In re General Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1136 (7th Cir. 1979), citing *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005 (2d Cir. 1973), *vacated on other grounds*, 417 U.S. 156 (1974).

DEPOSITION OF MICHAEL ROONEY

* * * *

[Tr. 409] THE WITNESS: There is certainly coding of cases, as your cases are settled, as there continue to be throughout the country, coding of cases within one of the three non-malignant categories.

But my understanding of the agreement with your firm is the cases are negotiated individually on a monthly basis, and we have regular disputes with respect to the value of cases.

I'm not sure what your question is there, then.

MR. BARON: Let's take a break. Maybe you can think of an answer.

(Recess.)

BY MR. BARON

Q. Mr. Rooney, so that I can clear up one thing here — I want to be sure I understood you correctly:

In these letters that you received from Greitzer & Locks where they say "It is further understood that in the future Greitzer & Locks will not handle or process [Tr. 410] claims against the CCR defendants unless they meet certain mutually agreeable disease criteria," was it your understanding that that was going to be a term that was going to be filled in later and would be the criteria that were agreed to in the Carlough case?

A. Generally, that's correct.

Q. So the agreement with Greitzer & Locks to settle their present cases would be the agreement, in terms of the medical criteria aspect of it, that was reached in Carlough?

MR. HANLON: Objection. Mischaracterizes his testimony.

BY MR. BARON:

Q. Correct?

A. We agreed that we would reach mutually agreeable disease criteria.

Q. So a mutually agreeable disease criteria that you would reach with Greitzer & Locks would be the same disease criteria you would reach in Carlough; correct?

A. Perhaps.

Q. Well, that was your understanding of how it was going to work, wasn't it?

* * * *

[Tr. 416] Q. Was the medical criteria that was set out in these restrictive agreements for Ness Motley the same medical criteria that you agreed to in Carlough?

A. Yes, I believe so.

Q. And you at least understood that they would not sue you in cases that didn't reach that criteria?

When I say "you," I mean CCR.

A. They agreed to comply with the original language we put forth in the original agreements.

Q. Did you have two separate sets of negotiations with Ness Motley, one for the criteria for their own inventory futures deal and one separate for Carlough?

Or did you negotiate the two together?

A. We never, never negotiated their [Tr. 417] present inventory at the same time as the Carlough negotiations.

Q. Let me show you something, and let's see if we can clarify this a little bit.

(Deposition Exhibit 4 referenced.)

MR. BARON: For the record, R-4 says it is a CCR Settlement Agreement, it's a four-page document, and it's signed 14 January, 1993.

BY MR. BARON:

Q. Have you seen that document before?

A. Yes.

Q. Is that your signature affixed to the back of it?

A. Yes.

Q. What was the purpose of that agreement, as you understood it?

A. This was a confirmation of an agreement to settle Ness Motley's pending cases in the State of South Carolina, and it also included an agreement on the payment terms, and it also included an agreement with respect to [Tr. 418] future cases.

Q. Now, is there a group of medical criteria set out in that agreement?

A. Yes, there is.

Q. Are those criteria identical to the criteria that were set out in Carlough?

MR. HANLON: Can we look at the material in Carlough?

MR. BARON: Sure.

BY MR. BARON:

Q. When I say the same, I mean essentially the same.

A. There are certain requirements in the Carlough action that are not part of this agreement, but I would characterize it as being substantially similar with respect to pulmonary function tests and things of that nature.

Q. Is that a coincidence that they are substantially similar?

A. No.

Q. Why not?

A. At the time we signed this agreement, we had an understanding with respect to the Carlough criteria.

* * * *

[Tr. 457] Q. Did you participate in the negotiations of these case flows?

A. Yes.

Q. Did class counsel ask for more than 15,000 claims the first year when they were negotiating with you?

A.—I'm sure, like any negotiation, there were higher numbers discussed at some point than what we ultimately agreed to.

I'm sure we discussed lower numbers.

BY MR. BARON:

Q. Well, in the negotiations of these case flow numbers, did class counsel ever present you with data indicating that these numbers would not compensate enough people?

MR. LOCKS: Objection.

THE WITNESS: I don't recall any review of data.

BY MR. BARON:

Q. Mr. Rooney, while you've been at CCR, do you recall ever having settled a case that involved only medical monitoring?

A. Not to my recollection, no.

Q. Do you recall ever settling a [Tr. 458] case, since you've been at CCR, where the plaintiff agreed that he had not received any nature of an asbestos-related injury, but wanted money for emotional injury?

A. I'm not aware of any such claim being settled.

Q. Are you aware of Greitzer & Locks or Ness Motley ever asserting such claims in the past against CCR?

A. Such claims?

Q. As medical monitoring only, or emotional injury only?

A. I'm not aware of any such filings by class counsel, no.

Q. What physicians did CCR utilize, if any, in negotiating the medical criteria of this settlement?

A. I don't know which physicians our negotiators on the medical contacted.

Q. Did you participate in the negotiation of the medical criteria?

A. I did not participate in the negotiation of the criteria, no.

Q. Who did?

A. Primarily Mr. Beers and

* * * *

DEPOSITION OF ROBERT GEORGINE

* * * *

[Tr. 65] Q. Have you ever gone to a lawyer for your own personal reasons to file a claim for damages for yourself —

A. No.

Q. — for asbestos-related injury?

A. No.

Q. And why is that?

A. I haven't had a problem.

Q. Is that still true today? That you haven't had a problem?

A. Well, I don't — I breathe normal — I don't have any problems that I'm aware of.

That's not to say that one can't develop.

Q. Oh, I understand that.

A. Okay.

Q. And God forbid, I hope nothing ever does develop, but until you develop an asbestos-related problem, you have no intention of filing a lawsuit for damages, do you?

A. Other than the present — present case?

Q. Well, in the present case, do you believe that the asbestos companies owe you [Tr. 66] money? M-o-n-e-y.

A. Owe me personally?

Q. Yes.

A. I believe that if there was anything that happened to my lungs that was asbestos-related, that they would owe me money, yes.

Q. But as of today, nothing has happened to your lungs that's asbestos-related that you know of?

A. That letter tells me that there is nothing that shows.

Q. So as of today, you are not seeking money from the asbestos companies for yourself; is that right?

A. For myself, that's right.

Q. Mr. Georgine, if the doctor's report had come back telling you that you had damages to your lungs as a result of asbestos, would you then want to seek money damages from the asbestos companies for yourself?

A. As a member of this class.

Q. And if the doctor came back and told you that you had pleural plaques, for instance, would you want to seek money damages

* * * *

[Tr. 113] A. Yeah, I think so, if I thought that I was psychologically damaged.

Q. Do you believe that you are, sir?

A. No.

Q. You don't have —

A. Now, others may have a different opinion. I don't know about that.

Q. As you sit here today, you are not suffering any emotional distress because you might come down with an asbestos —

A. No, I am not. I am not.

Q. And you were not at the time you entered this lawsuit?

MR. McCONNELL: Brian, time is limited. That was the sixth time.

MR. WOLFMAN: That was the first time.

I said, as he sits here today, is he suffering any emotional distress. His answer was no. I began my next question, and you interrupted me.

BY MR. WOLFMAN:

Q. My next question is:

As of the time you entered the [Tr. 114] lawsuit, were you suffering any emotional distress on account of asbestos exposure?

A. No, I was not.

Q. Let me ask you a few questions about the process by which the AFL-CIO became involved in this suit.

How did the AFL-CIO, as an organization, go about making the public statement that it approved the proposed settlement in this case?

Let me back up.

Was there a meeting of the Executive Council concerning this settlement, to your knowledge?

A. Concerning this settlement?

Q. Yes.

A. No.

Q. How many of the AFL-CIO affiliates sit on the Executive Council?

A. 33.

Q. Do you sit on the Executive Council, sir?

A. I do.

Q. So to your knowledge, the settlement in this cases was never brought to

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

C.A. No. 93-0215

GEORGINE, et al.,

Plaintiffs,

v.

AMCHEM PRODUCTS, INC., et al.,

Defendants and
Third Party Plaintiffs,

v.

ADMIRAL INSURANCE COMPANY, et al.,

Third Party Defendants.

ORDER

AND NOW, this 2nd day of February, 1994, in accordance with this Court's Order of January 29, 1993 appointing Professor Stephen Burbank as Special Master pursuant to Fed. R. Civ. P. 53 and the Court's inherent power, to assist the Court in its consideration of the proposed settlement submitted by the parties, Special Master Burbank having received and reviewed sensitive, confidential and privileged data from the settling parties, it is hereby ORDERED that the Clerk of the Court shall docket and file of record the attached reports of Special Master Burbank on the inventory settlements of class counsel in Pennsylvania and South Carolina and shall distribute copies of the reports to all counsel of record.

/s/ CHARLES R. WEINER, J.

Report of the Special Master on Inventory Settlements I: South Carolina

I. INTRODUCTION

I have been asked as Special Master to analyze confidential information for the purpose of assisting the Court in evaluating the so-called inventory settlements reached by class counsel with the Center for Claims Resolution in 1993. Specifically, I have been asked to compare the inventory settlements with the settlements reached by class counsel and CCR during the period 1988-92.

As a representative sample of the inventory settlements, I chose the agreements covering the home states of the Ness, Motley and Greitzer & Locks firms, South Carolina and Pennsylvania respectively. In addition, I asked Mr. Baron and Mr. Pyle, counsel for certain objectors, to designate two additional jurisdictions. They chose Illinois for Ness, Motley and New Jersey for Greitzer & Locks.

In this report, I discuss the work performed, and the conclusions reached, with respect to settlements between Ness, Motley and CCR in South Carolina. In a separate report of this date, I discuss settlements between Greitzer & Locks and CCR in Pennsylvania. Reports on the Illinois and New Jersey settlements will be prepared and submitted separately.

II. CONCLUSION

The conclusion of my analysis and comparison of the settlement data for South Carolina involving Ness, Motley and CCR is that the inventory settlement averages were lower than the Ness, Motley/CCR historical settlement averages in three categories (Mesothelioma (living), Lung Cancer, and Non-Malignant) and higher in one category (Mesothelioma (deceased)). In the remainder of this report I describe how I arrived at historical settlement averages and provide more detail concerning the results of comparing the historical averages with the inventory averages.

III. DISCUSSION

I received from Ness, Motley and from CCR historical data on settlements between Ness, Motley and CCR in South Carolina during the period 1988-92. The lists provided each included 160

cases and were broken down into four disease categories (Mesothelioma, Lung Cancer, Other Cancer, and Non-Malignant). The lists also included the amount attributed to the settlement of each case by the providing entity, as well as total amounts and cases by category. Moreover, the CCR data permitted me to break down Mesothelioma cases into deceased and living categories, which was necessary because of the structure of the South Carolina inventory settlement.

I compared the lists provided to determine (1) discrepancies as to cases listed, (2) discrepancies as to disease categories, and (3) discrepancies as to amounts. I determined that 147 cases were included under the same disease categories in both lists. An additional 8 cases were included in both but under different disease categories. 10 cases appeared on only one list, 5 cases on each list. I also determined that the difference in total dollars attributed to all settlements on the lists provided was 1.28% of the highest total so attributed by either providing entity.

I initiated inquiries by telephone to Mr. Rice of Ness, Motley and Mr. Hanlon, representing CCR, asking each to verify the cases he had listed but that were not included on the other's list and to determine why cases listed by the other were not included on his list. I also asked each of them to verify the disease categories of the 8 cases differently listed by Ness, Motley and CCR. These inquiries revealed that 5 cases listed by Ness, Motley had been excluded from CCR's data as atypical (because of significantly less claimant exposure to CCR products than the overall exposure mix or because deemed a "no pay" settlement), while 2 cases listed by CCR had been excluded by Ness, Motley as atypical (because of inability to establish product identity or a prior settlement with another defendant). In addition, Ness, Motley had erroneously failed to include 2 cases included by CCR, while CCR had erroneously included 1 case which, upon further inquiry, turned out to be a settlement by another defendant.

At the end of this process of reconciliation, the lists included 149 cases under the same disease categories. The difference in total dollars attributed to these settlements was .36% (one third of one percent) of the highest total so attributed by either of the providing entities. I compared the 149 cases, by category, in order to calculate historical averages. I first totaled the amounts

attributed by each providing entity to cases in a disease category and calculated the dollar and percentage differences (as a percentage of the highest total amount). The dollar differences were a net figure of individual case differences going both ways, and the percentage differences also went both ways, depending on disease category. Those calculations yielded the following percentage differences: (1) Mesothelioma (deceased) - 5.9%; Mesothelioma (living) - 4.7%; (2) Lung Cancer - 1.9%, and (3) Non-Malignant - 5.6%. There was only 1 case listed as "Other Cancer" by a providing entity, and it was included under a different disease category on the other list.

Responses to my inquiries to counsel and my experience as a result of serving as a special master in MDL 875 suggest that these differences in settlement dollars attributed to the same cases are due primarily to varying practices in the allocation of group settlements.

Because Ness, Motley and CCR attributed different total dollars, and hence different averages, to disease categories in the reconciled historical data, it was necessary to devise a method for imputing a single historical average to each disease category. For the purpose of computing such historical averages to compare to the averages under the South Carolina inventory settlement agreement between Ness, Motley and CCR, I used an amount reflecting one half the difference in the total amounts allocated to the cases in a disease category. Thus, for example, if Ness, Motley attributed \$1,000 to the 10 cases in a disease category and CCR attributed \$1,400 to the same 10 cases, the average (\$120) would be based on \$1200, the midpoint between \$1400 and \$1000.

Proceeding in this way, I then calculated the dollar and percentage differences (as a percentage of the highest average) between the Ness, Motley/CCR South Carolina historical averages and the averages used in the South Carolina inventory settlement agreement. The percentage differences are indicated below, with a notation whether the inventory average is lower or higher than the historical average:

- (1a) Mesothelioma (deceased): 6.1% higher
- (1b) Mesothelioma (living): 3.6% lower
- (2) Lung Cancer: 3.4% lower
- (3) Non-Malignant: 3.5% lower

There is no percentage difference between the inventory average for "Other Cancer" cases and the amount attributed to the only case so classified by one of the providing entities in the historical data.

It should be noted that Mesothelioma cases, the overall number of which is not broken down in the South Carolina inventory settlement agreement, represent 6.8% of the total cases covered by that agreement. Lung Cancer cases account for 14.2%, Other Cancer cases for .8%, and Non-Malignant cases for 78%.

Finally, both Ness, Motley and CCR have provided me with accounts of the reasons for differences between their South Carolina historical averages, as they perceive them, and the averages agreed to in the inventory settlement agreement. I do not believe, however, that there is need to summarize their accounts in this report.

February 1, 1994

/s/ STEPHEN B. BURBANK
Special Master

* * * *

Report of the Special Master on Inventory Settlements II: Pennsylvania

I. INTRODUCTION

I have been asked as Special Master to analyze confidential information for the purpose of assisting the Court in evaluating the so-called inventory settlements reached by class counsel with the Center for Claims Resolution in 1993. Specifically, I have been asked to compare the inventory settlements with the settlements reached by class counsel and CCR during the period 1988-92.

As a representative sample of the inventory settlements, I chose the agreements covering the home states of the Ness, Motley and Greitzer & Locks firms, South Carolina and Pennsylvania respectively. In addition, I asked Mr. Baron and Mr. Pyle, counsel for certain objectors, to designate two additional jurisdictions. They chose Illinois for Ness, Motley and New Jersey for Greitzer & Locks.

In this report, I discuss the work performed, and the conclusions reached, with respect to settlements between Greitzer

& Locks and CCR in Pennsylvania. In a separate report of this date, I discuss settlements between Ness, Motley and CCR in South Carolina. Reports on the Illinois and New Jersey settlements will be prepared and submitted separately.

II. CONCLUSION

The conclusion of my analysis and comparison of the settlement data for Pennsylvania involving Greitzer & Locks and CCR is that the inventory settlement averages were lower than the Greitzer & Locks/CCR historical settlement averages in all four categories (Mesothelioma, Lung Cancer, Other Cancer and Non-Malignant). In the remainder of this report I describe how I arrived at historical settlement averages and provide more detail concerning the results of comparing the historical averages with the inventory averages.

III. DISCUSSION

I received from Greitzer & Locks and from CCR historical data on settlements between Greitzer & Locks and CCR in Pennsylvania during the period 1988-92. One of the lists provided included 1740 cases and the other 1716 cases. Both were broken down into four disease categories (Mesothelioma, Lung Cancer, Other Cancer, and Non-Malignant). The lists also included the amount attributed to the settlement of each case by the providing entity, as well as total amounts and cases by category.

I compared the lists provided to determine (1) discrepancies as to cases listed, (2) discrepancies as to disease categories, and (3) discrepancies as to amounts. I determined that 1703 cases were included under the same disease categories in both lists. One list included 37 cases not found on the other, which in turn included 13 cases not found on the first. 49 of the 50 cases not common to both lists were classified as Non-Malignant. I also determined that the difference in total dollars attributed to all settlements on the lists provided was 2.2% of the highest total so attributed by either providing entity.

I initiated inquiries by telephone to Mr. Locks of Greitzer & Locks, and Mr. Hanlon, representing CCR, asking each to verify the cases he had listed but that were not included on the other's list and to determine why cases listed by the other were not included on his list.

These inquiries revealed that Greitzer and Locks had erroneously listed 6 cases that were settled in a different time period and had erroneously failed to include 11 cases that they had in fact settled with CCR during the relevant time period. Greitzer & Locks could find no record of 1 case listed by CCR. In addition, CCR had erroneously listed 1 case that was settled with other counsel and had erroneously failed to include 4 cases because the initial attribution to other counsel was incorrect. It was also determined that 21 cases listed by Greitzer & Locks had been excluded from CCR's data as "no pay" settlements or because settled in the wrong time period and that CCR could find no record of 6 cases. Finally in this aspect, as a result of researching my inquiries, Greitzer & Locks revised the amounts attributed to 3 cases (a total net decrease of \$2500).

At the end of this process of reconciliation, the lists included 1718 cases under the same disease categories. The difference in total dollars attributed to these settlements was 3.0% of the highest total so attributed by either of the providing entities. I compared the 1718 cases, by category, in order to calculate historical averages. I first totaled the amounts attributed by each providing entity to cases in a disease category and calculated the dollar and percentage differences (as a percentage of the highest total amount). The dollar differences were a net figure of individual case differences going both ways, and the percentage differences also went both ways, depending on disease category. Those calculations yielded the following percentage differences: (1) Mesothelioma - 5.0%; (2) Lung Cancer - 2.4%, (3) Other Cancer - 11.5%, (4) Non-Malignant - 5.9%.

Responses to my inquiries to counsel and my experience as a result of serving as a special master in MDL 875 suggest that these differences in settlement dollars attributed to the same cases are due primarily to varying practices in the allocation of group settlements.

Because Greitzer & Locks and CCR attributed different total dollars, and hence different averages, to disease categories in the reconciled historical data, it was necessary to devise a method for imputing a single historical average to each disease category. For the purpose of computing such historical averages to compare to the averages under the Pennsylvania inventory settlement agreement between Greitzer & Locks and CCR, I used an amount reflecting

one half the difference in the total amounts allocated to the cases in a disease category. Thus, for example, if Greitzer & Locks attributed \$1,000 to the 10 cases in a disease category and CCR attributed \$1,400 to the same 10 cases, the average (\$120) would be based on \$1200, the midpoint between \$1400 and \$1000.

Proceeding in this way, I then calculated the dollar and percentage differences (as a percentage of the highest average) between the Greitzer & Locks/CCR Pennsylvania historical averages and the averages used in the Pennsylvania inventory settlement agreement. The percentage differences are indicated below, with a notation whether the inventory average is lower or higher than the historical average:

- (1) Mesothelioma: 12.3% lower
- (2) Lung Cancer: 12.8% lower
- (3) Other Cancers: 12.0% lower
- (4) Non-Malignant: 14.2% lower

Finally, both Greitzer & Locks and CCR have provided me with accounts of the reasons for differences between their Pennsylvania historical averages, as they perceive them, and the averages agreed to in the inventory settlement agreement. I do not believe, however, that there is need to summarize their accounts in this report.

February 1, 1994

/s/ STEPHEN B. BURBANK
Special Master

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

**AFFIDAVIT OF STEVEN KAZAN IN SUPPORT OF
REPLY BRIEF ON MOTION TO CERTIFY
CALIFORNIA MESOTHELIOMA OPT OUT CLASS**

I, Steven Kazan, declare:

1. I am an attorney in good standing, admitted to practice law in the States of New York and California. I represent moving parties Betty Francom, Aileen Cargile and John Wong.

I have personal knowledge of the facts set forth in this affidavit and, if called as a witness, am competent to testify to those facts.

2. I am the Senior Partner and President of Kazan, McClain, Edises & Simon, a Professional Law Corporation, in Oakland, California. For nearly twenty years, the firm has represented plaintiffs in cases involving catastrophic injury, including asbestos disease litigation, environmental and occupational exposures, defective products, and other personal injuries.

3. My firm never files asbestos personal injury claims in federal court. There is no theory of federal jurisdiction, and there rarely exists diversity jurisdiction because local California-based manufacturers or distributors of asbestos products are often named as defendants. Based on my experience with the plaintiffs' asbestos bar and as a Board Member of California Trial Lawyers Association, it is my belief that all other California attorneys practicing in the area of asbestos personal injury also file cases primarily in state court. Indeed, since the Asbestos Multi-District Litigation process began in 1991, my opinion is that it would be legal malpractice to file an asbestos personal injury claim in federal

court if there was any good-faith basis for alleging state court jurisdiction.

4. Occasionally, defendants have attempted to remove my firm's cases to federal court. In virtually all such cases, the federal courts have immediately remanded those cases to state court.

5. CCR conducted an analysis of their settlement history, which focused on settlements that were for amounts in excess of the maximum value for such claims if treated as Non-Extraordinary Claims under the CCR Settlement. CCR 2000281. For all high value mesothelioma claims, the national average was \$359,715 as contrasted with the \$200,000 maximum allowed under the Settlement. *Id.* 15% of these high value claims were from California and the statewide average for these claims was \$419,674, the highest average for any state. *Id.* Notably, the California average was over 209% above the maximum allowable recovery for Non-Extraordinary claims. As further described below, the Extraordinary Claim process, which will allow for certain mesothelioma claims to be settled at an average of \$300,000, cannot handle even 25% of predicted California mesothelioma claims.

6. Based on CCR's historical settlement data, we can predict that approximately 12% of all mesothelioma claims will originate in California. (422 claims out of a total of 3566, settled between October 1988 and January 1993). CCR 2000306 - 307. Applying this percentage to the allowable mesothelioma case flow in the first year of the settlement (700), we can estimate a quota of only 84 mesothelioma claims for California. Stipulation at Exhibit A. Given that only 3% of mesothelioma claims may be found to be "Extraordinary Claims" under the Settlement, or 21 claims annually, only one of every four California claims may be found qualified for "Extraordinary" status and eligible for compensation in excess of \$200,000. This, of course, assumes that no cases from other than California will be designated "Extraordinary," which is not realistic nor would it be fair. Based on historical compensation levels in California for mesothelioma claims, the CCR Settlement will not adequately compensate the California mesothelioma class.

7. CCR's settlement history data demonstrates that only 3.7% of all mesothelioma claims have been settled for zero dollars.

(137 zero dollar dispositions of 3703 total mesothelioma case dispositions). CCR 2000308.

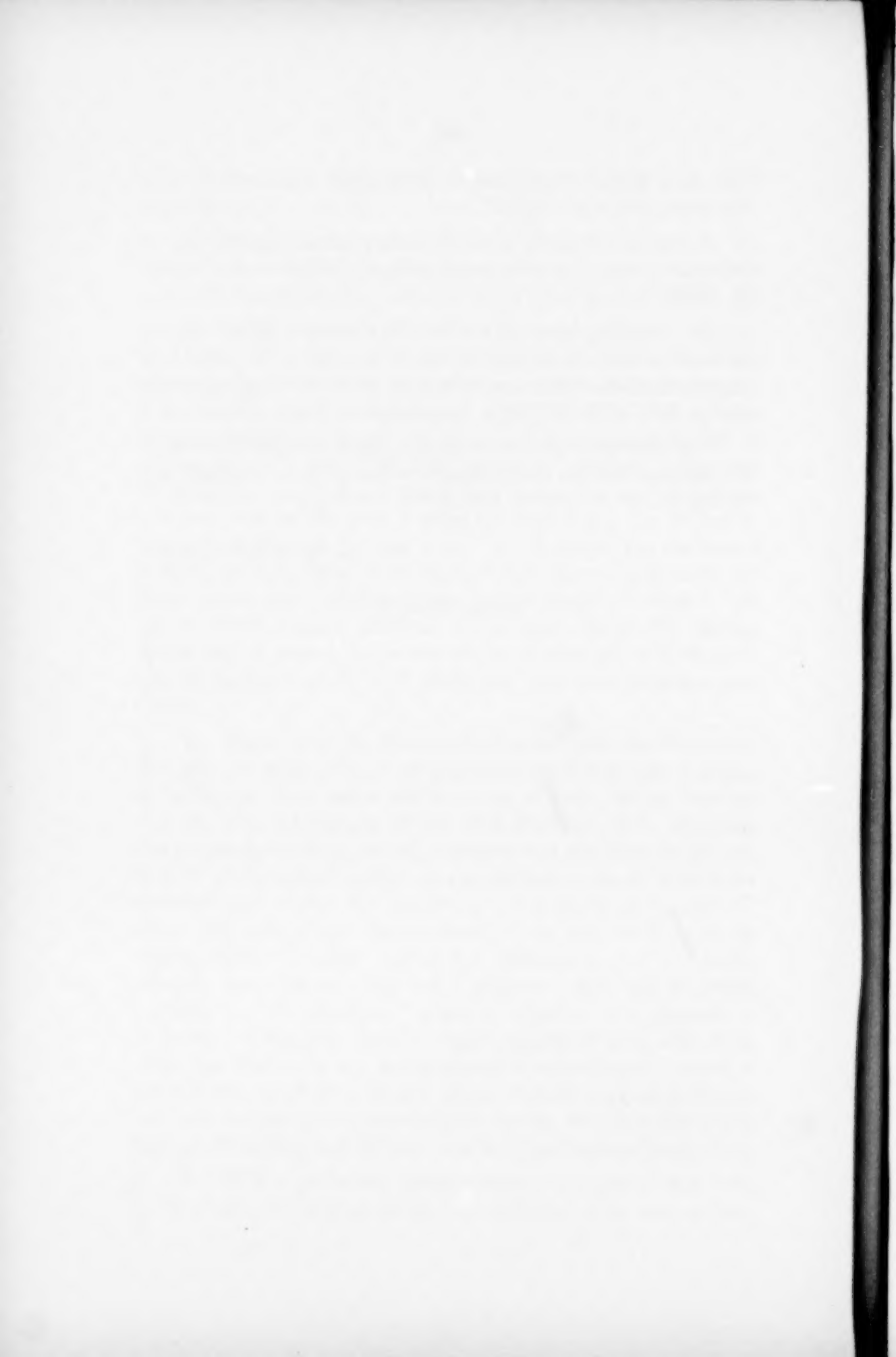
8. Attached hereto as Exhibit A is a true and correct copy of the opinion in *Coughlin v. Owens-Illinois*, 94 C.D.O.S. 82 (Dec. 29, 1993).

9. Attached hereto as Exhibit B is a true and correct copy of the confidential documents produced by the CCR which are referenced in this affidavit as well as the Reply Brief In Support Of Motion To Certify California Mesothelioma Class.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of February, 1994 at Oakland, California.

/s/ STEVEN KAZAN

[Jurat Omitted]



PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
SUMMARY OF CCR CLOSED CLAIMS THROUGH 1991 THAT EXCEED THE
PROPOSED MAXIMUM VALUE FOR NON-EXTRAORDINARY/QUALIFYING CLAIMS
BY STATE AND DISEASE

	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
STATE															
AL	—	—	—	—	—	—	—	—	—	2	130,580	65,290	2	130,580	65,290
AR	—	—	—	—	—	—	—	—	—	2	65,024	32,512	2	65,024	32,512
CALA	4	1,975,000	493,750	—	—	—	1	52,733	52,733	8	472,783	59,098	13	2,500,515	192,347
CASF	14	5,579,136	398,510	10	1,455,407	145,541	—	—	—	49	2,392,677	48,830	73	9,427,220	129,140
CO	2	462,000	231,000	—	—	—	—	—	—	—	—	—	2	462,000	231,000
CT	1	476,712	476,712	—	—	—	—	—	—	5	215,247	43,049	6	691,958	115,326
DC	1	345,000	345,000	1	106,791	106,791	—	—	—	5	172,916	34,583	7	624,707	89,244
DE	—	—	—	1	100,000	100,000	—	—	—	5	179,616	35,923	6	279,616	46,603
FL	4	1,223,108	305,777	8	899,522	112,440	3	106,972	35,657	19	779,464	41,024	34	3,009,066	88,502
GA	2	645,600	322,800	1	141,960	141,960	—	—	—	7	338,172	48,310	10	1,125,732	112,573
HI	—	—	—	1	157,168	157,168	—	—	—	—	—	—	1	157,168	157,168
IA	—	—	—	—	—	—	—	—	—	2	72,500	36,250	2	72,500	36,250
IL	1	521,100	521,100	1	90,320	90,320	—	—	—	—	—	—	2	611,420	305,710
IN	—	—	—	—	—	—	1	38,750	38,750	—	—	—	1	38,750	38,750
KS	—	—	—	—	—	—	—	—	—	1	275,000	275,000	1	275,000	275,000

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
SUMMARY OF CCR CLOSED CLAIMS THROUGH 1991 THAT EXCEED THE
PROPOSED MAXIMUM VALUE FOR NON-EXTRAORDINARY/QUALIFYING CLAIMS
BY STATE AND DISEASE

	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
KY	1	370,000	370,000	—	—	—	—	—	—	1	35,000	35,000	2	405,000	202,500
LA	—	—	—	—	—	—	—	—	—	8	566,476	70,810	8	566,476	70,810
MA	—	—	—	—	—	—	—	—	—	1	34,163	34,163	1	34,163	34,163
MD	3	1,284,297	428,099	33	4,391,624	133,080	1	36,500	36,500	47	2,505,640	53,311	84	8,218,061	97,834
MI	5	1,394,750	278,950	—	—	—	—	—	—	21	798,313	38,015	26	2,193,063	84,349
MN	5	2,241,780	448,356	2	236,250	118,125	2	86,250	43,125	28	2,948,640	105,309	37	5,512,920	148,998
MO	2	700,000	350,000	1	202,800	202,800	—	—	—	7	296,903	42,415	10	1,199,703	119,970
MS	—	—	—	—	—	—	—	—	—	1	42,500	42,500	1	42,500	42,500
NC	1	339,276	339,276	—	—	—	—	—	—	4	149,900	37,475	5	489,176	97,935
NH	—	—	—	—	—	—	—	—	—	1	96,783	96,783	1	96,783	96,783
NJ	13	3,357,768	258,290	3	290,000	96,667	1	35,000	35,000	37	1,485,673	40,153	54	5,168,441	95,712
NY	20	8,138,982	406,949	39	5,961,133	152,850	19	750,000	39,474	110	6,688,536	60,805	188	21,538,651	114,567
OH	1	347,400	347,400	5	610,477	122,095	2	115,000	57,500	29	1,577,971	54,413	37	2,650,848	71,645
OK	1	577,922	577,922	—	—	—	—	—	—	1	34,740	34,740	2	612,662	306,331
OR	1	465,000	465,000	—	—	—	—	—	—	—	—	—	1	465,000	465,000
PAE	6	1,795,814	299,302	14	1,681,461	120,104	6	254,546	42,424	265	11,059,812	41,735	291	14,791,633	50,830

1947
The following information was obtained from the
Department of the Interior, Bureau of Land Management,
Washington, D. C. on July 1, 1947.
The land is owned by the United States Government.
The land is located in the State of California.
The land is located in the County of San Diego.
The land is located in the Township of Escondido.
The land is located in the Range of Escondido.
The land is located in the Section of Escondido.
The land is located in the Quarter of Escondido.
The land is located in the Half of Escondido.
The land is located in the Quarter of Escondido.

MS

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
SUMMARY OF CCR CLOSED CLAIMS THROUGH 1991 THAT EXCEED THE
PROPOSED MAXIMUM VALUE FOR NON-EXTRAORDINARY/QUALIFYING CLAIMS
BY STATE AND DISEASE

	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
PAW	1	200,000	200,000	3	345,000	115,000	1	50,000	50,000	22	897,641	40,802	27	1,492,641	55,283
SC	—	—	—	2	218,085	109,042	—	—	—	8	288,396	36,049	10	506,480	50,648
SD	1	356,085	356,085	—	—	—	—	—	—	—	—	—	1	356,085	356,085
TN	—	—	—	1	86,850	86,850	1	65,900	65,900	4	185,083	46,271	6	337,833	56,305
TX	24	8,472,023	353,001	9	1,266,458	140,718	2	101,000	50,500	101	5,038,641	49,888	136	14,878,122	109,398
VA	3	982,500	327,500	—	—	—	—	—	—	14	732,356	52,311	17	1,714,856	100,874
VI	—	—	—	—	—	—	—	—	—	1	131,800	131,800	1	131,800	131,800
WA	1	364,870	364,870	1	91,881	91,881	—	—	—	—	—	—	2	456,751	228,375
WI	1	190,000	190,000	—	—	—	—	—	—	—	—	—	1	190,000	190,000
WV	—	—	—	1	225,000	225,000	—	—	—	4	167,015	41,754	5	392,015	78,403
ALL	119	42,806,122	359,715	137	18,558,185	135,461	40	1,692,651	42,316	820	40,855,957	49,824	1,116	103,912,914	93,112

470

CENTER FOR CLAIMS RESOLUTION
ALL DISPOSITIONS
10/3/88 (INCEPTIONS) - 1/15/93

MESOTHELIOMA

	Without Zero Dollar Dispositions		With Zero Dollar Dispositions	
	#	AVG	#	AVG
OVERALL MEAN	3,566	\$68,657	3,703	\$66,117
MEAN EXCLUDING TOP 3 %	3,530	\$62,915	3,666	\$60,459
MEAN EXCLUDING TOP 5 %/BOTTOM 5 %	3,210	\$56,322	3,333	\$54,046
MEAN EXCLUDING CLAIMS SETTLED WITHIN TEN DAYS OF TRIAL & POST VERDICTS	2,543	\$54,760	2,652	\$52,510
MEAN EXCLUDING GREITZER & LOCKS AND NESS, MOTLEY INVENTORY SETTLEMENTS; AND MD, NY POWERHOUSE, & BRKLYN NAVAL SHIPYARD CONSOLIDATIONS	3,153	\$62,392	3,289	\$59,812

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AFFIDAVIT OF LARRY SARTIN

I, Larry Sartin, declare as follows:

1. I am an International Representative for the Oil, Chemical and Atomic Workers International Union (OCAWIU).
2. I am the Coordinator of the O.C.A.W.I.U. Occupational Disease Screening Program. In that capacity, I arrange for asbestos screenings for OCAWIU members and retirees. Any legal case that arises from those screenings is referred to local counsel.
3. One of my regular duties is to keep records of the settlements/judgements obtained for each case referred to local counsel.
4. I have reviewed all of the records of the OCAWIU cases that have been settled with the CCR defendants as of January 3, 1994, with the exception of those referred to in paragraph 5 below. Those records reflect the following:

WEST VIRGINIA

74 Pleural cases	\$10,000.00 per case
58 Asbestosis cases	\$10,000.00 per case

VIRGINIA

33 Pleural cases	\$15,000.00 per case
3 Asbestosis cases	\$20,000.00 per case
2 Lung Cancer cases	\$50,000.00 per case
1 Lung Cancer case	\$30,000.00

OHIO

2 Pleural cases	\$2,000.00 per case
1 Asbestosis case	\$2,000.00

KENTUCKY

1 Pleural case	\$ 6,500.00
16 Asbestosis cases	\$15,000.00 per case
Other Cancers	\$25,000.00 per case*
Lung Cancer	\$50,000.00 per case*
Mesothelioma	\$90,000.00 per case*

CALIFORNIA

1 Lung Cancer	\$125,000.00
---------------	--------------

*The specific number of cases are not yet available; however, the per case amount has been agreed upon.

5. I have been informed that settlements were reached recently in all CCR/OCAW cases, which number approximately 1000. However, the precise number of cases and settlement amounts have not yet been provided to me.

Further affiant sayeth not.

/s/ LARRY SARTIN

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 93-0215

ROBERT A. GEORGINE, et al., PLAINTIFFS,

v.

AMCHEM PRODUCTS, INC., et al., DEFENDANTS and
THIRD PARTY PLAINTIFFS,

v.

ADMIRAL INSURANCE COMPANY, et al.,
THIRD PARTY DEFENDANTS.

ORDER

AND NOW, this 14th day of February, 1994, in accordance with this Court's Order of January 29, 1993 appointing Professor Stephen Burbank as Special Master pursuant to Fed. R. Civ. P. 53 and the Court's inherent power, to assist the Court in its consideration of the proposed settlement submitted by the parties, Special Master Burbank having received and reviewed sensitive, confidential and privileged data from the settling parties, it is hereby ORDERED that the Clerk of the Court shall docket and file of record the attached reports of Special Master Burbank on the inventory settlements of class counsel in Illinois and shall distribute copies of the reports to all counsel of record.

/s/ LOWELL A. REED, JR., J.

**REPORT OF THE SPECIAL MASTER ON
INVENTORY SETTLEMENTS IIIA: ILLINOIS (LAKIN)**

I. INTRODUCTION

I have been asked as Special Master to analyze confidential information for the purpose of assisting the Court in evaluating the so-called inventory settlements reached by class counsel with the Center for Claims Resolution in 1993. Specifically, I have been asked to compare the inventory settlements with the settlements reached by class counsel and CCR during the period 1988-92.

As a representative sample of the inventory settlements, I chose the agreements covering the home states of the Ness, Motley and Greitzer & Locks firms, South Carolina and Pennsylvania respectively. In addition, I asked Mr. Baron and Mr. Pyle, counsel for certain objectors, to designate two additional jurisdictions. They chose Illinois for Ness, Motley and New Jersey for Greitzer & Locks.

In this report, I discuss the work performed, and the conclusions reached, with respect to settlements between Ness, Motley/the Lakin firm (hereinafter Ness, Motley) and CCR in Illinois. In a separate report of this date, I discuss settlements between Ness, Motley/the Bono firm and CCR in Illinois. Reports on the South Carolina and Pennsylvania settlements were submitted on February 1, 1994. A report on the New Jersey settlements will be submitted next week.

II. CONCLUSION

The conclusion of my analysis and comparison of the settlement data for Illinois (Lakin) involving Ness, Motley and CCR is that the inventory settlement averages were lower than the Ness, Motley/CCR historical settlement averages in three categories (Lung Cancer, Other Cancer, and Non-Malignant) and higher in one category (Mesothelioma). In the remainder of this report I describe how I arrived at historical settlement averages and provide more detail concerning the results of comparing the historical averages with the inventory averages.

III. DISCUSSION

I received from Ness, Motley and from CCR historical data on settlements between Ness, Motley and CCR in Illinois during the

period 1988-92. One of the lists provided included 195 cases and the other 121 cases. Both were broken down into four disease categories (Mesothelioma, Lung Cancer, Other Cancer, and Non-Malignant). The lists also included the amount attributed to the settlement of each case by the providing entity, as well as total amounts and cases by category. Ness, Motley's data included two lists for Non-Malignant cases, one including and one excluding 30 cases that were settled by the Lakin firm before Ness, Motley became affiliated counsel. I used the list excluding those cases, but toward the end of this report I show what their impact would have been on the comparison of historical and inventory averages if included.

I compared the lists provided to determine (1) discrepancies as to cases listed, (2) discrepancies as to disease categories, and (3) discrepancies as to amounts. I determined that 107 cases were included under the same disease categories in both lists. An additional 3 cases were included in both but under different disease categories. One list included 85 cases not found on the other, which in turn included 11 cases not found on the first. 94 of 96 cases not common to both lists were classified as Non-Malignant. I also determined that the difference in total dollars attributed to all settlements on the lists provided was 22.7% of the highest total so attributed by either providing entity.

I initiated inquiries by telephone to Mr. Rice of Ness, Motley and Mr. Hanlon, representing CCR, asking each to verify the cases he had listed but that were not included on the other's list and to determine why cases listed by the other were not included on his list. I also asked each of them to verify the disease categories of the 3 cases differently listed by Ness, Motley and CCR.

These inquiries revealed that 10 cases listed by Ness, Motley had been excluded from CCR's data as settled by other counsel, while 31 cases listed by CCR had been excluded by Ness, Motley as settled by other counsel (30 of which appeared on the additional list provided by Ness, Motley). In addition, Ness, Motley had erroneously included 1 case settled in the wrong time period, while CCR had erroneously included 54 cases that, upon further inquiry, turned out to be settlements with another law firm (Bono).

At the end of this process of reconciliation, the lists included 107 cases under the same disease categories. The difference in total dollars attributed to these settlements was 1.74% of the highest total so attributed by either of the providing entities. I compared the 107 cases, by category, in order to calculate historical averages. I first totaled the amounts attributed by each providing entity to cases in a disease category and calculated the dollar and percentage differences (as a percentage of the highest total amount). The dollar differences were a net figure of individual case differences going both ways, and the percentage differences also went both ways, depending on disease category. Those calculations yielded the following percentage differences: (1) Mesothelioma - 0% (i.e., no difference in total dollars); (2) Lung Cancer - 12.7%; and (3) Other Cancer - 13%; and (4) Non-Malignant - 2.5%.

Responses to my inquiries to counsel and my experience as a result of serving as a special master in MDL 875 suggest that these differences in settlement dollars attributed to the same cases are due primarily to varying practices in the allocation of group settlements.

Because Ness, Motley and CCR attributed different total dollars, and hence different averages, to most disease categories in the reconciled historical data, it was necessary to devise a method for imputing a single historical average to each disease category. For the purpose of computing such historical averages to compare to the averages under the Illinois (Lakin) inventory settlement agreement, I used an amount reflecting one half the difference in the total amounts allocated to the cases in a disease category. Thus, for example, if Ness, Motley attributed \$1,000 to the 10 cases in a disease category and CCR attributed \$1,400 to the same 10 cases, the average (\$120) would be based on \$1,200, the midpoint between \$1,400 and \$1,000.

Proceeding in this way, I then calculated the dollar and percentage differences (as a percentage of the highest average) between the Ness, Motley/CCR Illinois historical averages and the averages used in the Illinois (Lakin) inventory settlement agreement. I performed the same calculations including the 30 (Non-Malignant) cases reported on a separate list by Ness, Motley in a recalculated historical average. The percentage differences are indicated below, with a notation whether the inventory average is lower or higher than the historical average. The percentage in

brackets reflects calculations including the 30 additional Non-Malignant cases:

- (1) Mesothelioma: 3.3% higher
- (2) Lung Cancer: 27.1% lower
- (3) Other Cancer: 66.2% lower
- (4) Non-Malignant: 11.8% lower [2.7% higher]

It should be noted that Mesothelioma cases represent 3% of the total cases covered by the Illinois (Lakin) inventory settlement agreement. Lung Cancer cases account for 7.3%, Other Cancer cases for 5.4%, and Non-Malignant cases for 84.3%.

Finally, both Ness, Motley and CCR have provided me with accounts of the reasons for differences between their Illinois (Lakin) historical averages, as they perceive them, and the averages agreed to in the inventory settlement agreement. I do not believe, however, that there is need to summarize their accounts in this report.

/s/ STEPHEN B. BURBANK
Special Master

February 11, 1994

* * * *

REPORT OF THE SPECIAL MASTER ON INVENTORY SETTLEMENTS IIIB: ILLINOIS (BONO)

I. INTRODUCTION

I have been asked as Special Master to analyze confidential information for the purpose of assisting the Court in evaluating the so-called inventory settlements reached by class counsel with the Center for Claims Resolution in 1993. Specifically, I have been asked to compare the inventory settlements with the settlements reached by class counsel and CCR during the period 1988-92.

As a representative sample of the inventory settlements, I chose the agreements covering the home states of the Ness, Motley and Greitzer & Locks firms, South Carolina and Pennsylvania respectively. In addition, I asked Mr. Baron and Mr. Pyle, counsel for certain objectors, to designate two additional jurisdictions.

They chose Illinois for Ness, Motley and New Jersey for Greitzer & Locks.

In this report, I discuss the work performed, and the conclusions reached, with respect to settlements between Ness, Motley/the Bono firm (hereinafter Ness, Motley) and CCR in Illinois. In a separate report of this date, I discuss settlements between Ness, Motley/the Lakin firm and CCR in Illinois. Reports on the South Carolina and Pennsylvania settlements were submitted on February 1, 1994. A report on the New Jersey settlements will be submitted next week.

II. CONCLUSION

The conclusion of my analysis and comparison of the settlement data for Illinois (Bono) involving Ness, Motley and CCR is that the inventory settlement averages were higher than the Ness, Motley/CCR historical settlement averages in two categories (Mesothelioma and Non-Malignant) and lower in one category (Cancer). In the remainder of this report I describe how I arrived at historical settlement averages and provide more detail concerning the results of comparing the historical averages with the inventory averages.

III. DISCUSSION

I received from Ness, Motley and from CCR historical data on settlements between Ness, Motley and CCR in Illinois during the period 1988-92. One of the lists provided included 403 cases and the other 335 cases. One was broken down into four disease categories (Mesothelioma, Lung Cancer, Other Cancer, and Non-Malignant) and the other into three categories (Mesothelioma, Cancer, and Non-Malignant). Because the inventory settlement agreement employs only three disease categories, I combined Lung Cancer cases and Other Cancer cases for the providing entity making that distinction. The lists also included the amount attributed to the settlement of each case by the providing entity, as well as total amounts and cases by category. The Ness, Motley list separately listed amounts paid by GAF before it became a member of CCR, because that was deemed relevant by Ness, Motley in the negotiation of the inventory settlement agreement. I did not include GAF dollars in my calculations, but I show what their impact

would have been on the comparison of historical and inventory averages if included.

I compared the lists provided to determine (1) discrepancies as to cases listed, (2) discrepancies as to disease categories, and (3) discrepancies as to amounts. I determined that 328 cases were included under the same disease categories in both lists. One list included 68 cases not found on the other, which in turn included 0 cases not found on the first. 64 of the 68 cases not common to both lists were classified as Non-Malignant. I also determined that the difference in total dollars attributed to all settlements on the lists provided was 14.3% of the highest total so attributed by either providing entity.

I initiated inquiries by telephone to Mr. Rice of Ness, Motley, and Mr. Hanlon, representing CCR, asking each to verify the cases he had listed but that were not included on the other's list and to determine why cases listed by the other were not included on his list. I also asked each of them to verify the disease categories of the 5 cases differently listed by Ness, Motley and CCR.

These inquiries revealed that CCR had erroneously failed to include 58 cases because the initial attribution to other counsel was incorrect and had erroneously classified 2 cases by disease category, while Ness, Motley had erroneously classified 1 case by disease category. It was also determined that 10 cases listed by Ness, Motley had been excluded from CCR's data as "no pay" settlements. Finally in this aspect, 1 case erroneously excluded by CCR was initially, and it remained after my inquiries, differently classified by disease category.

At the end of this process of reconciliation, the lists included 388 cases under the same disease categories. The difference in total dollars attributed to these settlements was 2.6% of the highest total so attributed by either of the providing entities. I compared the 388 cases, by category, in order to calculate historical averages. I first totaled the amounts attributed by each providing entity to cases in a disease category and calculated the dollar and percentage differences (as a percentage of the highest total amount). The dollar differences were a net figure of individual case differences going both ways, and the percentage differences also went both ways, depending on disease category. Those calculations yielded

the following percentage differences: (1) Mesothelioma - 16.6%; (2) Cancer 24.4%; (3) Non-Malignant - 13.6%.

Responses to my inquiries to counsel and my experience as a result of serving as a special master in MDL 875 suggest that these differences in settlement dollars attributed to the same cases are due primarily to varying practices in the allocation of group settlements.

Because Ness, Motley and CCR attributed different total dollars, and hence different averages, to disease categories in the reconciled historical data, it was necessary to devise a method for imputing a single historical average to each disease category. For the purpose of computing such historical averages to compare to the averages under the Illinois (Bono) inventory settlement agreement, I used an amount reflecting one half the difference in the total amounts allocated to the cases in a disease category. Thus, for example, if Ness, Motley attributed \$1,000 to the 10 cases in a disease category and CCR attributed \$1,400 to the same 10 cases, the average (\$120) would be based on \$1,200, the midpoint between \$1,400 and \$1,000.

Proceeding in this way, I then calculated the dollar and percentage differences (as a percentage of the highest average) between the Ness, Motley/CCR Illinois historical averages and the averages used in the Illinois (Bono) inventory settlement agreement. I performed the same calculations including the GAF settlement dollars reported by Ness, Motley in recalculated historical averages. The percentage differences are indicated below, with a notation whether the inventory average is lower or higher than the historical average. The percentages in brackets reflect calculations that include the GAF dollars:

- (1) Mesothelioma: 8% [7.4%] higher
- (2) Cancer: 5.3% [6.5%] lower
- (3) Non-Malignant: 18.3% [10.9%] higher

It should be noted that Mesothelioma cases represent 1.1% of the total cases covered by the Illinois (Bono) inventory settlement agreement. Cancer cases account for 7.1%, and Non-Malignant cases for 91.8%.

Finally, both Ness, Motley and CCR have provided me with accounts of the reasons for differences between their Illinois (Bono)

historical averages, as they perceive them, and the averages agreed to in the inventory settlement agreement. I do not believe, however, that there is need to summarize their accounts in this report.

/s/ STEPHEN B. BURBANK
Special Master

February 11, 1994

DEPOSITION OF LAWRENCE FITZPATRICK

* * * *

[Tr. 341] Q. All right. As best you can do.

A. All right.

Many of these agreements use the language as found in paragraph 5, "Law firms will not file any future asbestos personal injury claims."

Q. Okay.

A. After many of these agreements were signed, there was an ABA advisory ethical opinion that arguably had some bearing on these agreements; I think people could differ as to whether it had any bearing at all.

But when that opinion came out, out of an overabundance of caution, we decided to make a change from the language that said, "will not file" to basically language that said, "will recommend."

We didn't view it as significant, because we really didn't view these kinds of provisions as legally binding documents, if you will. They were more of a commitment, a good faith commitment as to how these people were going to deal with us in the future.

Q. Why did you not view these [Tr. 342] documents as legally binding?

A. I don't see how you can sue on a document like this to enforce it.

The remedy, if somebody wants to breach an agreement like this, is to deal differently with them in the future, and is not to sue.

Q. If they weren't enforceable agreements, why did somebody go through the trouble of having everybody sign one?

A. We wanted to memorialize in writing their commitment to the future. It was moral commitment, if you will.

Q. Did you expect them to abide by that moral commitment?

A. Sure. And if they did not, we would have dealt with them differently in the future.

Q. In what way?

A. We would not have trusted them and would have been less reluctant to deal with them.

MR. MOTLEY: You mean more reluctant?

THE WITNESS: I'm sorry. More

* * * *

DEPOSITION OF KATHERINE KINSELLA

* * * *

[Tr. 19] A. It absolutely was not in '92. I know it was late January or early February, and I think it was February, that I first learned of it, because I learned of it and then there was a meeting very quickly. It wasn't anything that was protracted.

Q. Can you describe for me what Mr. Kamber told you about this particular case?

A. He basically said that there is going to be a class action notice campaign and that I should go over and talk to Shea & Gardner and set up an appointment and go and see and talk to them.

Q. Did he describe to you who the appointment and go and client was?

A. No.

Q. Did you work out a financial arrangement with him before you went to Shea & Gardner?

A. No, I did not.

Q. Was this part of your retainer work that you were doing for him?

A. I guess it could be construed as part of that. It was a new business [Tr. 20] development that would be obviously something that I would handle, because I have the expertise to do this notice.

Q. Have you ever handled notice in a class action before?

A. No, not in a class action.

Q. To your knowledge, has the Kamber Group ever handled notice in a class action before?

A. No.

Q. To your knowledge, has there anyone at Kamber who had had prior experience doing a notice campaign in a class action before?

A. No, there was not.

Q. So Mr. Kamber told you sometime in February that you were to go meet with someone at Shea & Gardner; is that right?

A. That's correct.

Q. Did he explain to you that Mr. Motley was involved in this particular case?

A. He mentioned that Mr. Motley was involved.

Q. Had you talked to Mr. Motley [Tr. 21] about this project before Mr. Kamber talked to you?

A. No, I don't believe I did.

Q. Do you know Mr. Locks?

A. Yes, I do.

Q. Had you talked to him before?

A. No, I did not.

Q. What about Mr. Rice?

A. No.

Q. Who did you meet with at Shea & Gardner?

A. I met with John Aldock, Betsy Geise, and I believe there was one other woman present whose name I don't recall.

Q. What did they tell you?

A. They explained the nature of the assignment, what they were looking for; a brief overview of what the class action was about and the settlement; and we discussed what we might be able to do in terms of providing notice.

Q. I take it you learned that the name of the case was Carlough versus Amchem, did you not?

A. Yes, I did.

* * * *

[Tr. 23] Q. Did you read materials on how to handle a class action notice campaign?

A. I had done the notice for the Manville Trust, which, in fact, I believe, from a technical point of view, as far as what I put together and how I approached it and how I thought it through, is very much similar to this.

I'm not sure whether it's notice in terms of whom I'm buying and the media I'm looking at and who I'm targeting, it would be very much the same kind of situation.

Q. Well, the Manville —

A. I don't really understand the distinction that you are making between the class action.

Q. The Manville Trust was a bankruptcy situation, was it not?

A. That's correct.

Q. And notice was issued in bankruptcy?

A. Notice was issued — yes, that's correct.

Q. But you had never before worked on a class action case?

[Tr. 24] A. That's correct.

Q. And you didn't consult with anyone who ever had?

A. I didn't consult with anybody that ever had.

I read extensively what was available, to see what other people had done in terms of notice.

Q. Would it be fair to say that the Kamber Group specializes in representing organized labor?

A. That has been one of its specialties.

Q. That has been its primary field, has it not?

A. It's been its primary field for some time, although it's expanded rapidly into other fields.

Q. By the way, does Kamber represent Mr. Georgine's insurance company?

A. I don't believe they currently are working with Union Labor Life Insurance Company.

Q. Had they in the past?

A. Yes, they had in the past.

* * * *

[Tr. 26] BY MR. BARON:

Q. Ms. Kinsella, what did you understand your task to be in this case in terms of the notice campaign?

A. I believe that my understanding was that I should develop a campaign that would provide proper notice to all people who could be potential claimants, potential members of the class, and to

provide them with information through whatever means I could ascertain relating to the class action and the settlement.

Q. Did that include personal notice wherever possible?

A. Absolutely.

Q. Did you understand from talking to the people that you talked to that personal notice was the preferable notice?

A. Yes, I did.

Q. Were you given any information about how many people might be in this class?

A. I don't believe I was given any [Tr. 27] specific number.

Q. Did you have a ballpark estimate in your own mind as to how many people might have been occupationally exposed to asbestos in the United States?

A. In terms of these twenty defendants or in general?

Q. First of all, in general.

MS. GEISE: Only if you know.

THE WITNESS: I really don't know.

BY MR. BARON:

Q. Did you have some ballpark of an estimate?

A. I didn't have an estimate. I knew it was substantial.

Q. What about in terms of these twenty companies; were you given information about how many people might be class members?

A. No, I was not.

Q. Did you understand that it might be more than twenty million people in the United States?

A. I didn't understand that it was larger or smaller than any number.

[Tr. 28] I knew, in my own mind, with twenty defendants and the products and what I knew in general about asbestos, having been involved in the asbestos issue for some time, I realized that it could be quite large.

Q. So you never put a handle on how many people you were trying to contact?

MS. GEISE: Objection. Asked and answered.

BY MR. BARON:

Q. Correct? You never had a targeted number?

A. No, I had a target demographic, an individual — or series of individuals that I thought — that I knew would potentially be members of this class.

The number of them was not relevant to me, because my job was to do as thorough notice as I possibly could to as many people as possible.

Q. With the understanding that individual notice was the preferable notice; correct?

A. That's correct.

* * * *

[Tr. 38] Is that right?

A. They asked me to design a campaign that would give proper notice to as many individuals as could be identified through a variety of mechanisms.

Q. The objective was to get personal notice to as many people as possible?

A. That's correct. What I would call individual notice.

Q. Do you know whether CCR made any effort to contact anyone at these hundreds of job sites, or perhaps thousands of job sites, where large numbers of claims had come in?

A. I do not know that.

Q. You certainly didn't do it?

A. No, I did not.

Q. No one under your direction did it?

A. That's correct.

Q. By the way, what cases do you remember reading on the issue of notice?

A. I didn't read the cases. I think I've made that clear.

I said I read some summaries of what the notice plans were that were related to [Tr. 39] cases.

I looked at Dalkon Shield, I looked at Agent Orange, I looked at Pfizer heart valve, and I relooked at the notice that I put together for the Manville Trust.

I think those are the ones I can remember off the top of my head.

Q. How long did you spend on this project?

A. In terms of total hours? Is that what you want? Or months?

Q. When did you begin your work?

A. I began my work after the meeting with Shea & Gardner, putting together a plan, and I worked on it extensively for several months, and then worked on it to a lesser degree for several months, and then I worked on it very heavily again.

Q. Did you do this by yourself or did you use other people?

A. I had a team of people at the Kamber Group that I supervised.

* * * *

[Tr. 65] copies for some of their members?

A. Correct.

Q. Let's talk about what other individual notice would have gone out.

The primary exercise here was to notify people who had been members of labor unions; is that correct?

A. That was not the primary. That was one of the targeted — we felt we could really target the notice to.

In fact, it wasn't — I would put it equal in weight with the paid media.

Q. Were you told which labor unions represented the most people that were exposed to asbestos?

A. No, I was not specifically told what labor unions had the most membership that were exposed.

Q. How did you gain that information?

A. I would say that the fact that I have been involved in the asbestos issue since the mid '80s, I have gained a certain amount of knowledge.

Because the Kamber Group also [Tr. 66] works with labor organizations, I have a good working knowledge of the labor organizations.

In addition, we called every single union that appeared to be somewhat relevant, or could be relevant, and spoke to usually the Health and Safety Director there, or if not, to somebody else who would be in a position to give us the information.

Sometimes that was General Counsel.

Q. So this was something that you did, as opposed to having somebody instruct you to do it, in terms of the labor unions?

A. That's correct.

Q. Class counsel didn't go to you and say, "Listen, these are the labor unions we should target"? You made that decision yourself?

A. Yes, I did.

Q. I take it class counsel had no input in that; is that right?

A. I don't believe so.

Q. Did you ever meet with class counsel on this case about the notice campaign? Ever?

[Tr. 67] You are hesitating. You can't think?

A. No, I'm not hesitating. I'm trying to remember.

I do not believe so.

I have had a conversation with Ron Motley, but I believe it was about another issue.

Q. So during this entire period, from February of 1993 until today, you cannot recall ever having any conversation regarding this particular case, the Carlough/Georgine case, with any of the class counsel?

A. You are somewhat confusing me right now. We were talking about labor.

Was the thrust of your question did I have a discussion with them about the labor? Did I discuss in general this setting?

Q. Let's do one at a time. What about regarding labor?

A. I don't believe so.

Q. What about generally?

A. In general, I had some conversation with Mr. Motley, but I don't recall what specifically it was.

[Tr. 68] I was also talking to him about a lot of other things.

Q. So it wasn't a meeting set up to deal with notice?

A. I don't believe so.

Q. Did you ever meet formally with class counsel to hear their input as to how the notice should go out?

A. Let me amend that. There was one brief meeting here, and I don't remember what date it was, in which Mr. Motley was present, and I believe we did discuss some labor unions, I think.

I don't really remember that completely.

Q. At any time during your work, did you meet Mr. Locks?

A. I'd met him previously. I didn't during this.

Q. Did Mr. Locks ever give you any instructions on how to notify people?

A. No, he did not.

Q. Did anyone from his office?

A. No.

Q. Did Mr. Rice ever give you [Tr. 69] instructions on how to notify people about this class action?

A. I never had a conversation about this class action with Mr. Rice.

Q. With Mr. Motley, you said you think you met with him once, but it was about other matters?

A. Most—I had a discussion with him about other matters, but I do recall that there was one meeting that we had here at Shea Gardner in which we talked about labor.

Q. Would it be fair to say that the notice campaign was being handled, as far as you were concerned, by Shea & Gardner?

A. I worked — I reported directly to Shea & Gardner.

Q. Were you paid by Shea & Gardner, to your knowledge?

A. No, I don't believe I was paid by Shea & Gardner.

Q. Who paid you?

A. The Center for Claims Resolution.

Q. Did you ever meet anyone from the Center for Claims Resolution?

[Tr. 70] A. I met Mr. Fitzpatrick.

Q. Anyone else?

A. I don't believe I have met anybody else.

Q. Did class counsel ever give you lists of groups to contact to issue notice to?

A. No, sir.

Q. Did class counsel ever give you specified job sites where they thought that you ought to go out and try to find people?

A. No, they did not.

Q. Did class counsel ever give you any ideas about how the media campaign itself should run?

A. No.

Q. To make a long story short: Did you receive any input from class counsel at all in terms of how the notification program should proceed?

A. I never had any conversations with Mr. Locks about that.

As I said, I believe we had a conversation about labor unions with Mr. Motley in one meeting.

But in terms of them giving me [Tr. 71] direction, no.

(Recess.)

BY MR. BARON:

Q. Other than the notice that was sent to people who are members of the labor unions, the final type of notice that went to the public generally was the television ads and the newspaper ads and the request that people call the 800 number?

A. That's correct.

In addition, we did a press release to about 2,000 outlets, media outlets.

Q. How many people from the United States population generally—which is, what, 250 million people?—called the 800 number?

A. 347,146.

Q. Who staffed the 800 number?

A. It was a professional service called Matrix Media.

Q. Of those 374,146 people who called the 800 number as a result of your media campaign, how many of them requested copies of the Stipulation of Settlement?

* * * *

[Tr. 73] Q. How much money was spent on this notice campaign?

A. A little over \$7 million.

Q. That's about \$17,000 per settlement stipulation, is it not?

A. I don't know what the math is. If that's what you say it is.

Q. Having done this, in hindsight, do you think there could have been a more efficient way to get that settlement stipulation out to the 4,223 people that requested it?

A. To those same individuals?

Q. Yes.

A. No.

Q. So you would have had to spend 6 or 7 million bucks to get out the 4,223 settlement stipulations?

A. I think — yeah.

Q. Is that right?

A. Yes.

Q. In addition to the 4,223 settlement stipulations that went out, there were notice packages that were sent out as well?

* * * *

[Tr. 77] Q. Let's go back, then.

Of the 347,146 calls that were received by the 800 number, 320,854 calls were requests for notice packages; right?

A. Yes, sir.

Q. Was that all the way up to January the 24th?

A. Yes.

Q. Now, I called the 800 number and they told me that it would be between five and ten business days before they could send out a package.

Was that your experience with them?

A. Yes, sir.

Q. How many calls went to the 800 number before January 1st?

A. I don't have that in my records, to answer that question.

Q. Were people told, who called after January 1st, that there was at least some likelihood that they wouldn't get the package until after the opt-out date?

MS. GEISE: I object. That's misleading. Ten days after January 1st is

* * * *

[Tr. 79] took 5 to 10 business days before the package was mailed out; correct?

A. That we would mail it within that time period; correct.

Q. Now, how much good would that do somebody who called in on January 15th to be able to get the package before January 24th to mail back?

A. Well, it depends on how long it would take to get there.

Q. If it took five to ten days before it got mailed out, the likelihood was it wouldn't get there by January 24th, would it?

A. No.

MS. GEISE: Is that a question?

MR. BARON: That's a question.

BY MR. BARON:

Q. It would not, would it?

A. It depends. Once again, if we are dropping mail from Washington, D.C., and the person is in Washington, D.C., it's high likely he would have got it in a day or two.

Q. Why did it take five to ten business days before you could send out a package?

[Tr. 80] Why does it take that long?

A. That was the length of time that we guaranteed that we would send it out by.

We would develop our labels, and the labels would be transmitted, and we would send them out as soon as we received them.

Most of the packages, I believe, went out in about three days to four days of the receipt of the phone call.

Q. Do you have any information that would verify that one way or the other?

A. I would have to check in my office.

I had my assistant handling the mailing operation. It was an interface between the 800 number and the mailing house.

Q. How many people were actually employed to send out these notice packages?

MS. GEISE: By who?

BY MR. BARON:

Q. By anyone.

A. I couldn't give you an exact number, but I do know that when you are mailing — our mailings were prepared — we worked on weekends — the mail house worked on weekends [Tr. 81] and hired, I believe, twenty-some odd individuals to assist over a period of time to — particularly in the initial stages, after we went to print, we had the names to send out, and then when we reprinted again.

Q. If you had hired forty people to do that job, you could have got them out faster, right?

Is that right?

A. Yes, that's correct.

Q. Did anyone tell you that you were on a limited budget for that particular task?

A. Absolutely not.

Q. So that was just a decision on your part?

A. I — no. We worked with a mail house that is a vendor, who has their own staff, and would supplement their current staff by additional people that were required to fulfill the task.

Q. You filed an interim report. Do you remember the interim report?

Do you have a copy of it?

A. Mm-hmm.

* * * *

[Tr. 84] timely?

A. No. We had a court-approved script that we were using at the 800 number, and we did not want deviation for fear somebody might give advice over the telephone.

Q. So people were told that they might receive their opt-out package after the opt-out date; is that right?

A. No, sir. We stayed right with the court-approved script.

Q. I think you meant "yes, sir" on that one.

A. Yes, sir.

Q. Do you have any way of knowing how many of those 300-some thousand mail-outs were received after January 24th?

A. I would say a small number compared to the overall packages, and I say that based on the fact that when I did an analysis of what the effect was of the print campaign and the television, that about 53 percent of all the requests came in right immediately around the week of the television and the first round of print work, which were running together in early December.

[Tr. 85] That's the only thing I can really give you in terms of exact numbers.

Q. Well, we know that there were 347,146 calls, of which 320,854 were requests for packages.

As of December the 2nd, we know that there were 79,107 calls and 68,409 requests for packages, so about 300,000 of the 374,000 calls that were made to the 800 number came after December the 2nd; right?

A. Correct.

Q. And we know that about 260,000 of the requests for packages came after December the 2nd?

A. That's correct.

Q. In terms of business days after December the 2nd and before, say, January the 15th, we are talking about probably less than thirty business days, are we not?

A. I would assume that that's roughly right.

Q. So the majority of the people, then, or the overwhelming majority of the people called in within a few weeks of the opt-out period?

[Tr. 86] A. No, I don't agree with that.

Q. Where am I mistaken here?

A. Because I think I just said to you that I believed that about 53 percent of the calls received were around the week of December 6th.

There was a little window between December 6th and probably — I would have to look at my calendar; maybe an eight-day period there, where we received 53 percent of our requests.

So if you take 53 percent of 320 and add the 68 or 69, and I would assume that — I know in fact that these were mailed out prior — prior to Christmas, so in fact it wasn't near the opt-out period.

Q. Do you know how long it takes to mail something from Washington, D.C. to, say, Tyler, Texas over Christmas?

Have you ever done a survey to find out how long it takes?

A. No, that's not my line.

Q. About ten days?

A. I have no knowledge of that.

MS. GEISE: Objection. She said

* * * *

[Tr. 98] Q. So in the original filing, you said that you were going to communicate with 56 unions that had a membership of millions and millions of workers — and I can't remember what the number was.

Do you recall?

A. I think it was — hold on. I have it in here.
9 million.

Q. There were 56 unions with 9 million workers, and you were planning to send out individual notice packages to as many of the 9 million as you could send out?

A. That's correct.

Q. But it turned out you only sent out a little less than 400,000 packages?

A. Mm-hmm.

Q. Why was it such a failure?

A. I don't believe it was a failure.

As I said before, I had been working with the Kamber Group, which works in the labor area, and this is the first time, to my knowledge, that an outside organization or outside requester requested and got labor [Tr. 99] mailing lists. I was not able to achieve that in the Manville Trust notice that I did, so think this is quite extraordinary.

They have a lot of issues on their agenda, and sometimes they are not — for political reasons as well as other reasons, are not willing to provide notice.

Q. Why didn't you tell that to the court when you made the proposal to send out 6.9 million packages, or however many it was?

MS. GEISE: objection. That's a mischaracterization of her initial affidavit.

BY MR. BARON:

Q. Did you know all along that less than 5 percent of the people of the union membership would actually get these notices?

MS. GEISE: I object on the grounds that you are not including the clip art, which was individually delivered.

MR. BARON: I'm talking about the notice package.

MS. GEISE: It's a misleading question.

THE WITNESS: My job was to do everything possible to convince them to do

* * * *

[Tr. 106] Q. Was it ever reported to you that in fact some of these in fact some of these were turned down because they were not pleased with the settlement?

A. I had no information — conversations about that.

Q. You never heard anything of that sort?

A. I know that there are people who are not happy with the settlement, but I don't know if any of the unions that did not run the clip art were the ones that were unhappy about it.

I have no personal knowledge about that.

Q. None of your staff reported that to you in any way?

A. No.

Q. Now, the clip art itself does not contain an exclusion form, does it?

A. No, it does not.

Q. Did you ever consider whether, as part of the clip art, a version of the exclusion form could be included?

A. No.

Q. You never gave that any [Tr. 107] consideration whatsoever?

A. No.

The unions, if you look at some of the materials that we got back from them, sometimes ran — allocated very little space to this, and my feeling on that was, every piece on that clip art contained the 800 number where an individual could get a notice packet and an exclusion form.

Q. I'm not sure that answered my question.

Did you give any consideration to whether you could provide camera-ready materials in the form of an exclusion form?

A. No, I did not.

Q. That was technologically feasible, was it not?

A. I believe so.

Q. Correct me if I'm wrong, but one of the things you mentioned to Mr. Baron was that the unions — some of the unions had a problem with divulging their membership lists?

A. That's correct.

Q. Did you make it absolutely clear to those unions that you would give them the [Tr. 108] materials, and that they could send it to their membership, and that you would pay for it?

A. Yes, sir. In writing.

Q. And they refused that as well, all but a handful, as I understand it?

A. Yeah, and it was for varying reasons.

We had discussions all the way through December with some unions that were still trying to make up their mind what they were going to do.

We were told by ACTWU that they would send us this list from — I guess it must have been November, and the response, after many, many, many, many phone calls to the individual, was, "I'm a one-man kayak," or canoe; "I've got to get to my other stuff, but when I get to this, I will."

MR. BARON: When you say ACTWU —

THE WITNESS: Amalgamated Clothing & Textile workers Union.

BY MR. WOLFMAN:

Q. You made it clear that you would pay the costs?

[Tr. 109] A. Yes.

Q. Did you make it clear that you would provide the staff assistance, if necessary?

A. Any way they wanted to assist us in getting individual notice, we would do it.

We would send the packets to their mailing house, so that nobody would ever see their mailing list.

I also furnished confidentiality — guaranteed confidentiality in writing to the unions that their lists, if they were given to our vendors for mailing, that no one else would see them.

Q. As I understand it, it looks like about five or six unions made mailings to individuals; is that correct?

A. Yes.

Q. Did Mr. Kirkland or anyone on his staff explain why they didn't send this to all the affiliated unions? His letter, I mean.

MS. GEISE: Objection. That's confusing.

MR. WOLFMAN: Strike that one.

* * * *

[Tr. 128] notification campaign, notice was individually delivered to approximately 6.8 million individuals."

Do you see that?

A. Yes, sir.

Q. You can't sit here today and tell us that 6.8 million individuals received notice of this class action, can you?

MS. GEISE: I object.

THE WITNESS: I believe so. In terms of — if you're discussing the union clip art, if you are talking about the packages that were sent out, those circulations, yeah, I do. I think that's correct.

BY MR. BARON:

Q. Of those 6.8 million people who supposedly received notice, a large percentage of those people would not be class members, to your knowledge, is that right?

A. I have no knowledge about that.

Q. For instance, UAW workers and people from unions that don't have heavy asbestos exposure would not be class members, would they, to your knowledge?

MS. GEISE: Objection.

* * * *

[Tr. 130] .8 or so would have been told that they had to opt out if they didn't want to participate in the class, and the other 6 million would not have that information?

A. I don't believe that's true.

MS. GEISE: I object. That's misleading.

BY MR. BARON:

Q. What information in the clip art would tell somebody that they had to opt out of the class if they didn't want to participate?

A. The purpose of the clip art and the purpose of the television spot was to refer people to the 800 number.

Q. That's not what I'm asking you.

Was there anything in the clip art —

MS. GEISE: Let's get it out, Mr. Baron, so it's not misleading.

BY MR. BARON:

Q. Was there anything in any of the television advertisements that explained to people that they had the duty to exclude themselves from the class if they did not want to be part of it?

[Tr. 131] A. No, not in the 30-second spot.

Q. Was there anything in any of the newspaper advertisements that explained to people that they had to exclude themselves if they wanted to not be a member of the class?

A. Absolutely.

Q. And in order to do that, they had to call the 800 number to get an exclusion form?

A. That's correct.

Q. What about in the clip art? Was there anything in there that explained to people that they had to call the 800 number to get the information to exclude themselves?

A. Let me just look at that.

MS. GEISE: Do you know what exhibit it is, Mr. Baron?

MR. BARON: I wasn't referring to one. I thought you people put it together.

MS. GEISE: When you are talking about clip art, what exhibit is it?

THE WITNESS: I think it's under E.

MS. GEISE: Yes, it's E.

THE WITNESS: Yes, the article

* * * *

[Tr. 133] A. At this point?

Q. Less than 15 percent?

A. Probably around 13; 12, 13.

Q. If you moved to Texas, where I live, you would find that number to be much, much less than that; is that correct?

A. I would assume so.

Q. I have a large number of clients in San Antonio, Texas who work with asbestos products. How would they have been notified of this class action; that are non-union people working in San Antonio, Texas?

MS. GEISE: You mean other than through you?

MR. BARON: Well, unfortunately, they don't come to me until they have a disease, and the people that have diseases, by and large, are not going to be members of this class.

BY MR. BARON:

Q. How would somebody in San Antonio, Texas become aware of this particular class?

A. If they were not a union member?

Q. If they were not a union member.

[Tr. 134] A. I don't know.

Q. Did you advertise in the San Antonio newspaper?

A. Let me see.

No. We advertised in those areas where we had a history of court cases and work sites.

Q. So if an individual lived in San Antonio, Texas, and was not a member of a union, and was exposed to asbestos occupationally, would it be fair to say that if they missed the television spot that ran for a day or so, they would have had no notice of this class?

A. No, I don't think that's true.

I don't have my records with me, but we also purchased Parade magazine, which goes into, I believe, 300-some odd media markets, and I believe it may very well be carried in San Antonio.

I don't know that for a fact, but that —

Q. Which newspaper in San Antonio carries Parade? Tell me.

A. I don't know. I would have to [Tr. 135] look that up.

Q. Do you know that any of them do?

A. I can't tell you that without looking it up.

Q. Well, let's assume that one of the newspapers in San Antonio carries Parade magazine.

If an individual who is not a union member, who lived in San Antonio, who was heavily exposed to asbestos, who didn't read that Sunday paper that had Parade magazine in it, assuming that there is one, how would that individual have known of the existence of this class action?

A. I don't know.

Q. You sure wouldn't have notified them, would you?

You sure didn't notify them, did you?

A. Did I notify them? No, I did not.

Q. Would it be fair to say if you had had more time, you could have notified more people?

A. No. I was satisfied that the [Tr. 136] notice plan for this was thorough.

Q. Well, you are still getting people calling in on the 800 number, aren't you?

A. I think you could have notice going on for ten years and people would still be calling in.

Q. Well, the notice that went out to most of the union members through this clip art didn't go out in the union magazines until sometime in December?

A. In December. That's correct.

Q. Right. And do you know how long it takes bulk rate mail to be delivered?

A. It could take two weeks.

Q. So if a union sent out their magazine perhaps in the middle of December, as most of them apparently did, it wouldn't have been received in the household until maybe the first week or so in January?

A. I don't have any specific knowledge about that, because I don't know exactly how — what class these publications go out.

Q. Would you say mail is slow [Tr. 137] around Christmas?

A. Yes, I think you could say that. Is specific mail slow around Christmas? Who has any way of knowing that?

Q. What about bulk mail?

A. It could be slow. I don't have any specific knowledge as to whether this was slow or fast.

Q. Well, let's be specific here for a minute. Let's look at your affidavit, and let's take a look at the unions that sent out notice with the clip art.

Let's look at the International Association of Machinists, which is one of the largest of the unions, right?

The publication —

MS. GEISE: What number is it?

MR. BARON: Exhibit 2, number 10.

BY MR. BARON:

Q. Exhibit 2, number 10, shows that the International Association of Machinists sent out their Machinists publication, which is their normal magazine, on December 16th to 700,000 people, and you are aware, are you not, [Tr. 138] that they use bulk rate mail?

A. I assume they probably do use bulk rate.

Q. Bulk rate mailing from December 16th would take no less than two weeks, would it not?

A. I would assume that's correct.

Q. So that would mean that the 700,000 members of the Machinists union would have received that publication, perhaps if they were lucky, the first week of January or so, right?

A. I would assume that's correct.

Q. So that would mean that the 700,000 members of the Machinists union would have received that publication, perhaps if they were lucky, the first week of January or so, right?

MS. GEISE: Objection.

BY MR. BARON:

Q. Is that right?

A. I can't say whether they received it or not.

Q. The likelihood is that's about when they would have received it.

MS. GEISE: Objection.

BY MR. BARON:

Q. Right.

A. I don't know.

Q. If they received it the first [Tr. 139] week of January, and they picked it up the next week and called the 800 number, they wouldn't have gotten their opt-out form until about the 20th or so of January; right?

A. Faced with a choice of a union whose publication date I have no control over, running it on December 16th versus not at all — and I made the correct decision in encouraging them to run it in that particular issue, so it certainly wasn't encouragement to run it in January.

Q. If these unions had sent it out in November or in October for a January opt-out date, a lot more people would have had the ability to opt out; right?

A. I would think — publication dates vary, and when the judge says go, you go.

For a November publication, or even a December publication, you've already missed the deadlines. They are already out.

Q. I'm not blaming you. I'm just asking you:

If the notice period had been a little longer, maybe another month, you would have gotten a lot more notices to a lot more

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

**SETTLING PARTIES' FINAL REPORT
ON IMPLEMENTATION OF THE NOTICE**

In its opinion and order dated October 27, 1993, this Court directed that the settling parties file a final report concerning implementation of the notice plan approved by the Court. In particular, the Court's decision directed that the final report include (under seal) "a list of the names and addresses of all potential class members to whom individual notice packets were mailed," and, like the interim notice report filed on December 6, set forth "(1) the number of individuals actually notified, (2) the categories of individuals notified, and (3) a description of precisely what efforts the various 'volunteer' organizations and persons have made to notify potential class members." Oct. 27 Dec. at 24-25.¹

The attached Declaration of Katherine Kinsella, the settling parties' notice consultant, explains in detail the steps taken to implement the notice plan approved by the Court. Ms. Kinsella's Declaration shows that the notice plan was implemented wholly in accord with the Court's decision. With respect to calls to and mailings from Class Counsel, attached are affidavits from Lynette Martinez and Jack Draper (for the Ness, Motley firm), and a Declaration from Gene Locks (for Greitzer and Locks). The answers to the Court's specific questions are as follows.

¹ The Court's opinion defined such "volunteer" organizations as "unions, plaintiffs' attorneys, other organizations whose members may be in the class, and trade, industrial, and legal publications." October 27, 1993 Dec. at 24 n.25.

1. Concerning efforts by unions and others to notify class members, Ms. Kinsella's Declaration explains that AFL-CIO President Lane Kirkland wrote to 48 AFL-CIO unions on October 29 to request their cooperation in the notice effort. Kinsella Decl. ¶ 4. Ms. Kinsella's firm, The Kamber Group, began follow-up phone calls to these unions during the first week in November, and the court-approved letter (Exhibit P to the notice materials) asking that the unions cooperate in the notice effort was sent out shortly thereafter. *Id.* As a result of these efforts, 35 national or international unions agreed to run some version of the Court-approved "clip art" (Exhibit E to the notice materials) in union publications delivered individually to approximately 6 million union members and retirees during the notice and opt-out period, and 9 national or international unions agreed to mail or to have mailed notice materials to almost 400,000 union members and retirees. *Id.* ¶ 5. All in all, then, these union efforts resulted in notice materials being delivered individually through the mail to approximately 6.4 million union members and retirees.

In addition, as Ms. Kinsella's Declaration relates (¶ 7), 36 plaintiffs' attorneys contacted her and asked for individual notice packets, either for mailing themselves or for mailing by Ms. Kinsella. In total, 17,494 individual notice packets were furnished to or mailed for these 36 plaintiffs' attorneys. *Id.*²

Finally, 1,960 individual notice packets were provided to the White Lung Association, and 1,980 packets were mailed to the members of the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), in response to requests from those organizations. Kinsella Decl. ¶ 11.

2. With respect to "categories of individuals notified," in addition to notice to union members and retirees, notice packets requested by plaintiffs' attorneys, and the packets sent to the White Lung Association and to the membership of SMACNA, discussed

² One of these attorneys requested 11,816 packets, or 68% of the packets requested by plaintiffs' attorneys. The other requests were much smaller. Kinsella Decl. ¶ 7.

above, various sets of notice materials were mailed to 1) approximately 26,000 plaintiffs (through their counsel) who served lawsuits on one or more CCR defendants between January 15, 1993 and January 10, 1994 (Kinsella Decl. ¶ 3); 2) almost 4,000 plaintiffs (through their counsel) who filed lawsuits or asserted claims against one or more CCR defendants during this same time period, but who have not yet served a CCR defendant with a lawsuit (*id.*); 3) over 1,000 plaintiffs attorneys who have, in the past twenty years, filed claims against one or more CCR defendants (*id.* ¶ 7); 4) over 325,000 individuals who called the 800-number to obtain a notice packet or a Stipulation of Settlement (*id.* ¶ 8); 5) over 2,000 individuals who contacted Class Counsel to obtain notice packets (Affidavit of Lynette Martinez ¶ 5; Declaration of Gene Locks ¶ 2); 6) over 200 individuals who contacted Ms. Kinsella seeking a notice packet (Kinsella Decl. ¶ 9); 7) over 8,000 officials of national or international unions, at the national, state, or local levels (*id.* ¶ 10); 8) 81 trade or other organizations, or trade, industrial or legal publications (*id.* ¶ 11); 9) over 2,000 national radio stations and wire services, and print, radio, and television outlets (*id.* ¶ 13); and 9) approximately 1,100 state and federal courts (*id.* ¶ 14).

3. Finally, with respect to the number of individuals notified, the mailings described above — apart from the calls to the 800-number — total notice to almost 6.5 million individuals. With respect to calls to the 800-number, between early November 1993, and January 24, 1994, there were 374,146 calls to the special 800-number, of which 320,854 calls were requests for notice packets, and 4,223 were requests for a copy of the Stipulation of Settlement. Kinsella Decl. ¶ 8. Class counsel also received thousands of calls, sent out over 2,000 notice packets, and directed numerous other callers to the main 800-number to obtain notice packets. See attached Affidavits of Lynette Martinez, Jack Draper, and the attached Declaration of Gene Locks. In total, these efforts mean that, during this notification campaign, notice was individually delivered to approximately 6.8 million individuals.

In addition to these mailings, the \$4 million paid media campaign was conducted as described in Ms. Kinsella's August 1993 Declaration. Kinsella Decl. ¶ 12. As Paragraphs 35-36 of the August 1993 Declaration explains, the circulation of the

newspapers in which the first round of print advertising was carried (on December 5, 1993) is 46 million, and the circulation of the newspapers in which the second round of print advertising was carried (on December 19, 1993) is 28 million. As also explained in Ms. Kinsella's August 1993 Declaration (¶ 37), *Parade* magazine, in which the full-page ad was carried on December 19, has a circulation of 36 million and a readership of 73 million. The paid television advertising — which ran the week of November 29 — reached between 73.8% and 85.6% of the TV households within the targeted media markets, and generated over 279 million target impressions among adults 35 years or older. Kinsella Decl. ¶ 12. Moreover, the mailings of press releases or newscast scripts to numerous media markets throughout the United States resulted in 118 publications in 28 states (and the District of Columbia) carrying 125 announcements concerning the class action; the circulation reached by these 125 announcements was just over 13 million. Kinsella Decl. ¶ 13. Twenty-nine radio stations also made announcements concerning the class action in November and December, for a total of 203,200 gross radio impressions. Id.

* * * *

In short, the notice plan was implemented entirely in accord with the Court's October 27, 1993 decision. Over 6.8 million individuals received individually delivered notice materials, and millions more were notified through media efforts. The notice campaign in this class action lived up to its promise to be the most extensive ever attempted. Notice to the class in this class action has been far more than adequate to satisfy both Rule 23 and the Due Process Clause.

Gene Locks

Greitzer and Locks
22nd Floor
1500 Walnut Street
Philadelphia, PA 19102
(215) 893-0100

Ronald L. Motley
Joseph F. Rice

Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street
Suite 600
P.O. Box 1137
Charleston, SC 29402
(803) 666-7503

Respectfully submitted,

/s/ JOHN D. ALDOCK
Elizabeth Runyan Geise

Shea & Gardner
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036-1872
(202) 828-2000

John G. Gaul #34257

Center for Claims Resolution
116 Village Boulevard
Princeton, NJ 08540
(609) 520-6800

Of Counsel:

Lawrence Fitzpatrick

Center for Claims Resolution
116 Village Boulevard
Princeton, NJ 08540
(609) 520-6800

Attorneys for the Settling Parties

DATED: February 16, 1994

DECLARATION OF KATHERINE KINSELLA

1. My name is Katherine Kinsella. I am Senior Vice - President and Senior Consultant to The Kamber Group, the largest independently-owned communications company in Washington, D.C. I am responsible for the design and implementation of the notice to the class in *Carlough et al. v. Amchem Products, Inc. et al.*, C.A. 93-CV-0215 (E.D. Pa.). I submitted a Declaration to this Court on August 16, 1993, which described the notice plan proposed by the settling parties. In the October 27, 1993 decision and order largely approving this plan, the Court directed that the settling parties file both an interim and a final report describing implementation of the notice plan. Accordingly, an interim report, which was accompanied by my Declaration, was filed on December 6, 1993. The purpose of this Declaration is to describe the implementation of the notice for purposes of the final report. All facts stated in this Declaration are based upon my personal knowledge or information supplied to me by trusted subordinates in the regular course of business.

2. On November 1, 1993, the settling parties filed with the Court a set of final notice materials. For simplicity, the various notice materials will be described in this Declaration by their exhibit numbers in the November 1 filing. Moreover, the description of the implementation of the notice will follow the same order as the description of the notice plan in my Declaration filed on August 16, 1993 with the settling parties' joint motion for approval of the notice.

INDIVIDUAL NOTICE

3. In Paragraph 21 of my August 1993 Declaration, I stated that complete individual notice packets, including the full Notice (Exhibit A), the Questions and Answers (Exhibit B), and an appropriate cover letter (Exhibit I), would be sent to counsel for all plaintiffs (or to the plaintiffs directly, if unrepresented by counsel) who have filed lawsuits against one or more CCR defendants from January 15, 1993 until two weeks prior to the close of the notice and opt-out period. Accordingly, on or about November 13, 1993, individual notice packets were mailed to 253 counsel for the 20,814 plaintiffs who served lawsuits on one or more CCR defendants from January 15, 1993 through October 31, 1993. Similarly, on

or about December 23, 1993, notice packets were mailed to 97 counsel for the 2,307 plaintiffs who served lawsuits on one or more CCR defendants from November 1, 1993 through November 30, 1993. Also, on or about December 15, 1993, notice packets were sent to three counsel representing almost 4,000 plaintiffs who had filed suit or asserted claims against, but who had not yet served, one or more CCR defendants since January 15, 1993. Finally, a mailing was sent on or about January 13, 1994, to the 97 counsel for the 3,118 plaintiffs who served lawsuits on one or more CCR defendants from December 1, 1993 through January 10, 1994. (All of these plaintiffs were represented by counsel.) Lists of all these plaintiffs (organized by plaintiffs' counsel) are submitted (under seal) as Exhibit 1-A (November mailings), 1-B (December mailings) and 1-C (January mailings) to this Declaration. The cover memoranda that accompanied these mailings to plaintiffs' counsel are also included in Exhibits 1-A to 1-C.

4. Paragraph 22 of my August 1993 Declaration described the efforts that we would make to obtain help from the 56 national or international unions (listed in Exhibit O to my August 1993 Declaration) to provide notice to their current or retired members. These efforts were aided immeasurably by the commitment of the national AFL-CIO, in its September 24, 1993 *amicus* brief endorsing the settlement, to help in the notice campaign. Accordingly, on October 29, 1993, President Lane Kirkland of the AFL-CIO, wrote to the 48 AFL-CIO unions on the list in Exhibit O, urging each of them to cooperate in the notice effort. We began follow-up calls to all 56 unions listed in Exhibit O during the first week in November, and, shortly thereafter, sent out the letter to these unions prescribed in the notice plan (Exhibit P to the notice materials).

5. As a result of these efforts, 35 national or international unions agreed to run some form of the "clip art" (Exhibit E to the notice materials) in the publications that they mailed during the notice and opt-out period to the homes of their members and retirees, and 9 agreed to mail or to have mailed notice materials to certain current and retired members of their unions. Exhibit 2 to this Declaration sets forth the unions who published "clip art" in their individually-delivered publications, and the mailing dates and

circulation figures for these publications.¹ Exhibit 3, in turn, sets forth the unions who agreed to mail or to have mailed notice materials to their members and retirees, and the number of these mailings. All in all, these union efforts resulted in the "clip art" being run in publications that were delivered individually to almost 6 million union members and retirees, and the mailing of notice materials to almost 400,000 union members and retirees.

6. I do not have complete lists of all the union members and retirees to whom these almost 400,000 individual mailings were sent, since several of the unions chose to do these mailings themselves, and did not give to us the names and addresses. I do have, however, a list of over 200,000 union members and retirees to whom notice materials were mailed, and that list is submitted (under seal) as Exhibit 4 to this Declaration.

7. Paragraph 24 of my August 1993 Declaration stated that an information and notification packet (consisting of Exhibits J, A, B, C, E, and F) would be mailed to the 1,000-plus attorneys who represented plaintiffs who filed claims against one or more CCR defendants. These mailings were sent out on or about November 13. Pursuant to the cover letter accompanying these packets (Exhibit J), 36 attorneys contacted me and requested 17,494 individual notice packets. (One of these attorneys requested 11,816 packets, or 68% of the packets requested by attorneys. The other requests were much smaller.) The attorneys either mailed these packets themselves, or furnished labels and we mailed the packets for them. The list of 1,000-plus attorneys to whom the initial mailing was sent it [sic] attached as Exhibit 5, and the list of 36 attorneys who requested additional packets, and the number requested by each, is attached as Exhibit 6.

8. Paragraph 25 of my August 1993 Declaration explained that every notice document would refer potential class members to a special 1-800 telephone number, from which potential class members could obtain a complete individual notice packet (Exhibits

¹ The Interim Report on the notice listed 36 unions that had agreed to publish "clip art" notice materials in their publications. The United Mine Workers, however, did not publish such "clip art," reducing the number of unions in Exhibit 2 to 35.

I, A and B). The 800-number was operational from November 5 (at least one week in advance of the first mailings under the notice plan) through midnight on January 24, 1994.² As of midnight on January 24, the 800-number had received 374,146 calls, of which 320,854 calls were requests for notice packets, and 4,223 were requests for the full Stipulation of Settlement. The list of individuals to whom notice packets or the full Stipulation of Settlement were mailed is attached (under seal) as Exhibit 7 to this Declaration.

9. I also received many letters and a few calls from potential class members requesting notice packets. The list of the 210 individuals to whom I mailed packets is attached (under seal) as Exhibit 8 to this Declaration.

NOTIFICATION THROUGH UNIONS AND OTHER LABOR BODIES

10. Paragraphs 27 and 28 of my August 1993 Declaration described mailings that would be made (consisting of Exhibits K, A, B, C, E and F) to various officers in 56 national and international unions, in five trade and industrial departments of the AFL-CIO, the AFL-CIO State Federations, AFL-CIO Central Labor Councils, State Building Trades Councils, the Local Building Trades Councils, and over 6,000 local labor unions affiliated with the 56 national or international unions listed in Exhibit P.³ These mailings, which totaled over 8,000 packets, were sent out on or about November 13. The list of individuals to whom this mailing was sent is submitted (under seal) as Exhibit 9 to this Declaration.

² As of February 1, 1994, pursuant to an order of this Court, the 800-number has carried a recording notifying individuals who call of the deadline for submitting objections to the settlement, and of the schedule for the fairness hearing.

³ My August 1993 Declaration estimated the number of these local unions to be 10,000-15,000. The actual number (obtained from the Department of Labor) is 6,403.

NOTIFICATION THROUGH TRADE OR OTHER ORGANIZATIONS AND THROUGH TRADE, INDUSTRIAL, AND LEGAL PUBLICATIONS

11. Paragraphs 30 and 31 of my August 1993 Declaration described mailings that would be sent (consisting of Exhibits M, A, B, C, E and F) to 81 trade or other organizations, or trade, industrial or legal publications (which were listed in Exhibits Q and R to my August 1993 Declaration). These mailings were sent out on or about November 13. In addition, two of these organizations requested packets for mailing to their membership. Thus, 1,960 individual notice packets were provided to the White Lung Association on or about November 17, 1993, and 1,980 packets were sent to members of the Sheet Metal and Air Conditioning Contractors' National Association on or about December 15.

NOTIFICATION THROUGH PAID MEDIA

12. Paragraphs 32-42 of my August 1993 Declaration described the paid television and print advertising components of the notice plan. Under the notice plan, a 30-second television ad (Exhibit D) was run in the 80 media markets described in Exhibit U to my August 1993 Declaration during the week of November 29. The paid television advertising reached between 73.8% and 85.6% of the TV households within the targeted media markets, and generated over 279 million target impressions among adults 35 years or older.⁴ This was followed by print advertising (Exhibit C) on Sunday, December 5, in the 292 newspapers (136 media markets) described in Exhibit S of my August 1993 Declaration. A second round of print advertising was run two weeks later (on Sunday, December 19) in the 114 newspapers (59 media markets)

⁴ We have not been notified that any of the television spots we purchased did not run, and, under the general industry practice, we would have been notified by now if any of the purchased ads did not run. In addition, the media buyer for the Kamber Group, SMY, Inc., is in the process of obtaining and analyzing affidavits from the various television stations to ensure that our entire media buy was aired.

described in Exhibit T of my August 1993 Declaration, and in *Parade* magazine.⁵

PUBLIC SERVICE MEDIA STRATEGY

13. Paragraph 43 of my August 1993 Declaration explained that a cover letter and press release or newscast script (Exhibits M and G) would be sent to all national radio stations and wire services, and to all major print, radio, and television outlets in the 136 media markets where paid print advertising was run. These mailings, which totaled over 2,000 packets, were sent out on or about November 13. In response, a clipping service my firm hired showed that 118 publications in 28 states (and the District of Columbia) carried 125 announcements concerning the class action during the notice period; the circulation reached by these 125 announcements was just over 13 million. In addition, we have verified that 29 radio stations made announcements concerning the class action in November and December 1993, for a total of 203,200 gross radio impressions.

NOTIFICATION TO STATE AND FEDERAL COURTS

14. Finally, Paragraph 44 of my August 1993 Declaration states that complete information and notification packets (consisting of Exhibits N, A, B, C, E and F) would be sent to over 1,000 state and federal courts that have handled asbestos personal injury claims (either at trial or on appeal) against one or more CCR defendants. The mailings to these courts, which totaled approximately 1,100 packets, were sent out on or about November 13.

TIMING

15. Paragraph 45 of my August 1993 Declaration set forth the schedule for the notice campaign. The campaign was precisely on or ahead of the schedule set forth in Paragraph 45.

⁵ We have verified that all of this advertising was run. The only deviation from the notice plan was that the *Detroit Free Press* did not run the half-page ad a second time on December 19, but then corrected its mistake by running the ad on January 16, 1994.

COST

16. The total cost of the notification campaign, which was paid by the CCR defendants, was slightly over \$7 million. The cost of the campaign exceeded the estimate of \$5 to \$6 million in Paragraph 48 of my August 1993 Declaration chiefly because of the larger than expected number of calls to the 1-800 number.

CONCLUSION

17. In sum, I believe that implementation of the notice campaign in this class action was in full compliance with the Court's October 27, 1993 decision.

* * * *

I declare under penalties of perjury that the foregoing is true and correct.

February 15, 1994

/s/ KATHERINE KINSELLA

* * * *

Exhibit 2

**Unions That Ran "Clip Art" (Exhibit E)
in Union Publications**

Union Name	Publication Mailing Date	Approximate Circulation
1. Allied Industrial Workers	Nov. 30	66,500
2. American Flint Glass Workers	Dec. 10	16,000 ¹
3. Association of Western Pulp and Paper Workers	Nov. 29	18,000
4. Brotherhood of Locomotive Engineers	First week in Dec.	21,000
5. Brotherhood of Maintenance of Way Employees	Dec. 10	56,000
6. Brotherhood of Railroad Signalmen	mid-Dec.	8,000
7. Glass Molders, Pottery, Plastics and Allied Workers International Union	Dec. 1	100,000

¹ This union also put the "clip art" in a circular that was mailed on November 25 to approximately 1,000 officers of local unions.

Union Name	Publication Mailing Date	Approximate Circulation
8. International ¹ Association of Bridge, Structural & Ornamental Iron Workers	First week in Dec.	125,000
9. International Association of Firefighters	Nov. 22	195,000
10. International Association of Machinists	Dec. 16	700,000
11. International Brotherhood of Electrical Workers	Dec. 6	781,500
12. International Brotherhood of Firemen & Oilers	Dec. 1	30,000
13. International Chemical Workers	Dec. 10	65,000
14. International Organization of Masters, Mates & Pilots	First week in Dec.	20,000 ²
15. International Plate Printers, Die Stampers & Engravers	Nov. 20 (members) Nov. 23 (retirees)	4,000 ³

² This union also had notice packets mailed to 20-25 ports.

³ This union also prepared a special bulletin from the clip art to send

Union Name	Publication Mailing Date	Approximate Circulation
16. International Union of Bricklayers and Allied Craftsmen	Dec. 10	105,000
17. International Union of Elevator Constructors	Nov. 23	30,000 ⁴
18. International Union of Operating Engineers	First week in Dec.	360,000
19. International Union of Petroleum & Industrial Workers	First week in Dec.	5,000
20. International Woodworkers of America	Dec. 15	22,000 ⁵
21. Laborers' International Union	Dec. 15	400,000
22. National Marine Engineers' Benefit Association	Dec. 20	15,000
23. Operative Plasterers and Cement Masons International Association	Dec. 20	40,000

to 4,000 members and retirees.

⁴ This union also had notice packets mailed to 90 local unions.

⁵ This union also mailed notice materials to approximately 10,000 retirees. See Exhibit 3.

Union Name	Publication Mailing Date	Approximate Circulation
24. Pacific Coast, Marine Firemen, Oilers, Watertenders and Wipers	Dec. 19	800
25. Sheet Metal Workers	Nov. 29	130,000 ⁶
26. Stove, Furnace and Allied Appliance Workers International Union	Jan. 1	7,000
27. Transport Workers Union	Nov. 23	100,000
28. Transportation Communications International Union	Nov. 22	135,000
29. U.A. Plumbers & Pipe Fitting Industry	Dec. 1	330,000
30. United Automobile, Aerospace, Agricultural Workers	Dec. 2	1 million
31. United Brotherhood of Carpenters and Joiners	Nov. 19	550,000
32. United Paperworkers International Union	Dec. 10	250,000

⁶ This union also ran an article on the *Georgine* class action and proposed settlement, which discussed the opt-out procedures and gave the 800-number, in the September/October/November issue of its publication *Focus on Funds*. This union also had notice materials mailed to approximately 85,000 members and retirees. See Exhibit 3.

Union Name	Publication Mailing Date	Approximate Circulation
33. United Textile Workers	First or second week in Dec.	15,000 ⁷
34. United Union of Roofers, Waterproofers & Allied Workers	Dec. 10	25,000
35. Utility Workers' Union	Dec. 6	66,000
TOTAL CIRCULATION:		5,791,800

⁷ This union's publication is sent to the offices of the local unions, where it is handled out to members and retirees.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 93-0215

ROBERT A. GEORGINE, et al., PLAINTIFFS,

v.

AMCHEM PRODUCTS, INC., et al., DEFENDANTS and
THIRD PARTY PLAINTIFFS,

v.

ADMIRAL INSURANCE COMPANY, et al.,
THIRD PARTY DEFENDANTS.

ORDER

AND NOW, this 16th day of February, 1994, in accordance with this Court's Order of January 29, 1993 appointing Professor Stephen Burbank as Special Master pursuant to Fed. R. Civ. P. 53 and the Court's inherent power, to assist the Court in its consideration of the proposed settlement submitted by the parties, Special Master Burbank having received and reviewed sensitive, confidential and privileged data from the settling parties, it is hereby ORDERED that the Clerk of the Court shall docket and file of record the attached reports of Special Master Burbank on the inventory settlements of class counsel in New Jersey and shall distribute copies of the reports to all counsel of record.

/s/ LOWELL A. REED, JR., J.

**REPORT OF THE SPECIAL MASTER ON
INVENTORY SETTLEMENTS IV: NEW JERSEY**

I. INTRODUCTION

I have been asked as Special Master to analyze confidential information for the purpose of assisting the Court in evaluating the so-called inventory settlements reached by class counsel with the Center for Claims Resolution in 1993. Specifically, I have been asked to compare the inventory settlements with the settlements reached by class counsel and CCR during the period 1988-92.

As a representative sample of the inventory settlements, I chose the agreements covering the home states of the Ness, Motley and Greitzer & Locks firms, South Carolina and Pennsylvania respectively. In addition, I asked Mr. Baron and Mr. Pyle, counsel for certain objectors, to designate two additional jurisdictions. They chose Illinois for Ness, Motley and New Jersey for Greitzer & Locks.

In this report, I discuss the work performed, and the conclusions reached, with respect to settlements between Greitzer & Locks and CCR in New Jersey. Because, according to the settling parties, the New Jersey inventory settlement agreement was negotiated in a broader historical context that included settlements in Kentucky, toward the end of this report I include results from Kentucky for purposes of comparison. Reports on the South Carolina and Pennsylvania settlements were submitted on February 1, 1994; those on the Illinois settlements were submitted on February 11, 1994.

II. CONCLUSION

The conclusion of my analysis and comparison of the settlement data for New Jersey involving Greitzer & Locks and CCR is that the inventory settlement averages were lower than the Greitzer & Locks/CCR historical settlement averages in three categories (Lung Cancer, Other Cancer, and Non-Malignant) and higher in one category (Mesothelioma). In the remainder of this report I describe how I arrived at historical settlement averages and provide more detail concerning the results of comparing the historical averages with the inventory averages.

III. DISCUSSION

I received from Greitzer & Locks and from CCR historical data on settlements between Greitzer & Locks and CCR in New Jersey during the period 1988-92. One of the lists provided included 125 cases and the other 120 cases. Both were broken down into four disease categories (Mesothelioma, Lung Cancer, Other Cancer, and Non-Malignant). The lists also included the amount attributed to the settlement of each case by the providing entity, as well as total amounts and cases by category. I also received comparable historical data on settlements between Greitzer & Locks and CCR in Kentucky during the same period. In the following paragraphs I discuss the details of my analysis of the New Jersey data, and I report only the conclusions of my analysis of the Kentucky data for purposes of comparison.

I compared the lists provided to determine (1) discrepancies as to cases listed, (2) discrepancies as to disease categories, and (3) discrepancies as to amounts. I determined that 114 cases were included under the same disease categories in both lists. An additional 2 cases were included in both but under different disease categories. One list included 9 cases not found on the other, which in turn included 4 cases not found on the first. 11 of 13 cases not common to both lists were classified as Non-Malignant. I also determined that the difference in total dollars attributed to all settlements on the lists provided was 6.9% of the highest total so attributed by either providing entity.

I initiated inquiries by telephone to Mr. Locks and Mr. Pettit of Greitzer & Locks and Mr. Hanlon, representing CCR, asking each to verify the cases he had listed but that were not included on the other's list and to determine why cases listed by the other were not included on his list. I also asked each of them to verify the disease categories of the 2 cases differently listed by Greitzer & Locks and CCR.

These inquiries revealed that CCR had erroneously excluded 9 cases as settled by other firms, while Greitzer & Locks had erroneously and inadvertently excluded 1 case. In addition, CCR had erroneously classified 1 case by disease category.

At the end of this process of reconciliation, the lists included 125 cases under the same disease categories. The difference in

total dollars attributed to these settlements was 2.4% of the highest total so attributed by either of the providing entities. I compared the 125 cases, by category, in order to calculate historical averages. I first totaled the amounts attributed by each providing entity to cases in a disease category and calculated the dollar and percentage differences (as a percentage of the highest total amount). The dollar differences were a net figure of individual case differences going both ways, and the percentage differences also went both ways, depending on disease category. Those calculations yielded the following percentage differences: (1) Mesothelioma - 2.1%; (2) Lung Cancer - 2.4%; (3) Other Cancer - 29.8%; (4) Non-Malignant - 6.4%.

Responses to my inquiries to counsel and my experience as a result of serving as a special master in MDL 875 suggest that these differences in settlement dollars attributed to the same cases are due primarily to varying practices in the allocation of group settlements.

Because Greitzer & Locks and CCR attributed different total dollars, and hence different averages, to disease categories in the reconciled historical data, it was necessary to devise a method for imputing a single historical average to each disease category. For the purpose of computing such historical averages to compare to the averages under the New Jersey inventory settlement agreement, I used an amount reflecting one half the difference in the total amounts allocated to the cases in a disease category. Thus, for example, if Greitzer & Locks attributed \$1,000 to the 10 cases in a disease category and CCR attributed \$1,400 to the same 10 cases, the average (\$120) would be based on \$1200, the midpoint between \$1400 and \$1000.

Proceeding in this way, I then calculated the dollar and percentage differences (as a percentage of the highest average) between the Greitzer & Locks/CCR New Jersey historical averages and the averages used in the New Jersey inventory settlement agreement. I performed the same calculations on the historical averages from Kentucky, which were computed as above and the averages used in the Kentucky inventory settlement agreement. The percentage differences are indicated below, with a notation whether the inventory average is lower or higher than the historical average. The comparable percentages and notations for Kentucky appear in the adjacent column:

	NEW JERSEY	KENTUCKY
(1) Mesothelioma:	30% higher	32.3% lower
(2) Lung Cancer:	10.3% lower	3.3% higher
(3) Other Cancer:	22.7% lower	20.6% lower
(4) Non-Malignant:	2% lower	13.1% lower

It should be noted that Mesothelioma cases represent 5.1% of the total cases covered by the New Jersey inventory settlement agreement. Lung Cancer cases account for 6.5%, Other Cancer cases for 1.7%, and Non-Malignant cases for 86.7%.

Finally, both Greitzer & Locks and CCR have provided me with accounts of the reasons for differences between their New Jersey historical averages, as they perceive them, and the averages agreed to in the inventory settlement agreement. I do not believe, however, that there is need to summarize their accounts in this report.

DATED: February 15, 1994

/s/ STEPHEN B. BURBANK
Special Master

SETTLING PARTIES' EXHIBIT SP-302A

CCR SETTLEMENT AGREEMENT

AND NOW, in confirmation of an agreement in principle made between the parties listed below on or about the 11th day of November, 1992, the following Agreement is executed by and between the Center for Claims Resolution ("CCR"), on behalf of its members as of the date of this Agreement, and Joseph F. Rice, Esquire, of the law firm of Ness, Motley, Loadholt, Richardson & Poole ("Ness, Motley"), as agents for and on behalf of the plaintiffs/claimants ("plaintiffs") represented by them jointly or separately in the asbestos personal injury litigation in the State of South Carolina, this 14th day of January, 1993. Further, the law firm of Ness, Motley, Loadholt, Richardson & Poole shall be bound by the terms and conditions of this Agreement to the extent that they are co-counsel to any of the plaintiffs herein.

1. The cases that are subject to this Agreement consist of the following disease mix:

Disease	No. of Cases
Mesothelioma	31
Lung Cancer	64
Other Cancer	4
Non-Malignant	351
Total	450

2. Attachment "A" is a list of all plaintiffs whose cases/claims are being settled under the terms of this Agreement. Attachment "A" identifies the injured party's name, social security number and spouse's name, the court in which the case is filed or would have been filed, the docket number, the alleged disease and, if applicable, the estate representative's name and capacity. Ness, Motley agrees to recommend to each plaintiff/claimant identified on Attachment "A" the acceptance of the settlement amount allocated to each such plaintiff's case.

3. The settlement of these cases is based upon each plaintiff's current alleged asbestos-related disease is predicated on the assumption that all the cases qualify for payment under the terms of this Agreement. However, if a case does not qualify for payment or if the case qualifies but the plaintiff refuses to accept the settlement amount, then the total settlement figure will be reduced by the agreed-to allocated amount set forth below for the alleged disease and that case will be removed from the settlement and all rights of that plaintiff will be preserved in accordance with the provisions of this Agreement as if this Agreement did not exist.

Assuming that all plaintiffs qualify and accept as indicated above, the total amount of this settlement is . Should an individual plaintiff reject the recommendations of plaintiff's counsel to settle with the CCR, then the total settlement fund shall be reduced based on the following disease values:

Living Mesothelioma
Deceased Mesothelioma
Lung Cancer
Other Cancer
Non-Malignant

4. It is agreed between the CCR and Ness, Motley that all accepting plaintiffs' cases shall be settled in accordance with the procedures outlined below:

- a. Within fifteen (15) days of the date of this Agreement, Ness, Motley will provide to the CCR Attachment "A".
- b. No case will be eligible for payment until Ness, Motley provides, as to that case, the following:
 - (1) Evidence that the plaintiff was exposed to materials containing asbestos manufactured, sold, marketed or distributed by a member of the CCR. For the purposes of satisfying this requirement, the CCR and Ness,

Motley agree that any jobsite that has been accepted by CCR in the past as a jobsite on which asbestos-containing products were manufactured, sold, marketed or distributed by a member of CCR will be accepted in these cases, provided that the plaintiff demonstrates presence at that jobsite at the appropriate time. A list of the agreed jobsites and exposure periods will be attached to this Agreement as Attachment "B". In the absence of an agreement, plaintiff must provide an affidavit of the plaintiff, deposition testimony or co-worker affidavit, or other evidence acceptable to CCR to demonstrate exposure.

- (2) For each case submitted, Ness, Motley shall immediately make available to the CCR appropriate medical verification from a licensed physician upon whom Ness, Motley relies, to demonstrate that the plaintiff has contracted the asbestos-related disease claimed in Attachment "A". For the purpose of meeting this requirement, a medical record or report from a licensed physician providing a diagnosis of an asbestos-related injury as alleged by the plaintiff shall be sufficient. A record establishing the existence of a primary lung cancer or a mesothelioma shall be sufficient in and of itself.

- (3) The information required by this paragraph 4.b will be submitted to the CCR for each plaintiff not later than one hundred twenty (120) days prior to the date of the scheduled payment for the plaintiff, except that the information will be provided within ninety (90) days as to each plaintiff whose scheduled payment occurs on or before June 1, 1993. An Attachment "C", which is a CCR processing form that will be supplied to Ness, Motley by the CCR, must also be submitted for each plaintiff in addition to the information required above.
- (4) The CCR and Ness, Motley agree that if appropriate documentation is not provided for a case at the appropriate time then that case will be removed from the settlement and the total settlement amount will be reduced by the amount which would then have been allocated to that case, according to the amounts listed in paragraph 3, above, except that Ness, Motley can substitute for any non-qualifying case any other qualifying case on Attachment "A".

c. Provided that a plaintiff has submitted all the required information and documentation listed herein, the CCR will generate and forward a Release for that plaintiff which fully releases the CCR members from all future liability for asbestos personal injury claims to the claimant and any persons claiming by or

through the plaintiff or for plaintiff's alleged injuries, within sixty (60) days before the scheduled payment date, except that the releases will be provided within thirty (30) days before the scheduled payment date for any plaintiff who is scheduled for payment on or before June 1, 1993. Attachment "D" to this Agreement is the release form which will be executed by each of the plaintiffs.

d. It is agreed that payments will be made in the following amounts on the following dates:

June 1, 1993	25 %
November 1, 1993	25 %
June 1, 1994	25 %
October 1, 1994	25 %

Should an individual with a non-malignant claim develop an asbestos-related cancer prior to the time that the plaintiff is due to receive settlement from the CCR, then that claimant shall be entitled to be compensated at the rate for the asbestos-related cancer rather than any lower rate. Should such an increase in payment result in the total settlement fund's being increased, the increase shall be in an amount equal to the amount for the particular cancer as set forth in paragraph 3, above, less the amount that was already allocated to the plaintiff for the disease originally claimed.

5. Ness, Motley agrees further that his law firm will not file any future asbestos personal injury claims in any court in the State

- a. An asbestos-related malignancy; or
- b. Non-malignant asbestos-related changes with a chest x-ray of 1/0 and pulmonary function abnormalities as shown by either (a) FVC less than 80% of predicted with an FEV-1/FVC ratio (actual) greater than or equal to 75%; or (b) TLC less than 80% of predicted with a DLC less than or equal to 76% of predicted; or (c) TLC less than 80% of predicted with bilateral basilar crackles which are stated by a licensed physician to be the result of the underlying lung disease; or
- c. Non-malignant asbestos-related changes with a chest x-ray of 1/1 and pulmonary function abnormalities as shown by either (a) FVC less than 80% of predicted with FEV-1/FVC ratio greater than or equal to 72% (actual); or (b) TLV less than 80% of predicted; or
- d. A diagnosis by a licensed pathologist of asbestosis based on the CAF-NIOSH 1982 criteria; or
- e. Non-malignant asbestos-related changes with a chest x-ray showing bilateral pleural changes of extent C2 accompanied by the same pulmonary function testing requirements as set forth in paragraph 5.c., above, or bilateral pleural changes of extent B2 accompanied by the same pulmonary function testing requirements as set forth in paragraph 5.b. above.

Ness, Motley shall also not present any case for payment that is placed on a pleural registry as to any other defendant on or after the date of this Agreement.

7. The parties to this Agreement will make good faith efforts to resolve any disputes which may arise while carrying out the terms and conditions of this Agreement. If the parties are unable to resolve a disputed as to interpretation of any of the terms of this Agreement, the issues shall be referred to a mutually agreeable mediator for binding arbitration. The losing party shall be responsible for payment of the costs associated with arbitration.

AGREED TO AND ACCEPTED THIS DAY OF
 , 1993.

**Michael F. Rooney, Chief Operating Officer
Center for Claims Resolution**

Joseph F. Rice, Esquire
Ness, Motley, Loadholt, Richardson & Poole

SETTLING PARTIES' EXHIBIT SP-302B

Redacted copies of the settlement agreements between the CCR and the law firms affiliated with Ness, Motley in West Virginia, providing for the settlement of 7,839 present claimants represented by those firms in the State of West Virginia, and for the possibility of an alternative dispute resolution procedure with respect to future claims.

CCR SETTLEMENT AGREEMENT

AND NOW, in confirmation of an agreement in principle made between the parties listed below on or about the 11th day of November, 1992, the following Agreement is executed by and between the Center For Claims Resolution ("CCR"), on behalf of its members as of the date of this Agreement, and James F. Humphreys, of the law firm of James F. Humphreys (hereinafter referred to as Plaintiff Counsel), as agents for and on behalf of the plaintiffs/claimants ("plaintiffs") represented by them jointly or separately in the asbestos personal injury litigation in the State of West Virginia. Further, the law firm of Ness, Motley, Loadholt, Richardson & Poole shall be bound by the terms and conditions of this Agreement to the extent that they are co-counsel to any plaintiffs herein. This Agreement supersedes all prior agreements by and between these parties which relate to the settlement of pending claims, specifically including the agreement of April 27, 1993.

1. The terms of this Agreement shall remain confidential between the parties, their principals, and their counsel unless mutually agreed otherwise by the CCR and Plaintiff Counsel, or when necessary to comply with court orders, or in an action to enforce the terms and conditions of this settlement Agreement itself.

2. The cases that are subject to this Agreement consist of the following disease mix:

Disease	No. of Cases
Mesothelioma	9
Lung Cancer	28
Other Cancer	22
Non-Malignant	3,564

Non-Malignant (Premises)	268
Total	3,891

3. Attachment "A" is a list of all plaintiffs whose cases/claims are being settled under the terms of this Agreement. Attachment "A" identifies the injured party's name, social security number and spouse's name, the court in which the case is filed or would have been filed, the docket number, the alleged disease and, if applicable, the estate representative's name and capacity. Plaintiff Counsel agrees to recommend to each plaintiff/claimant identified on Attachment "A" the acceptance of the settlement amount allocated to each such plaintiffs case.

4. The settlement of these cases is based upon each plaintiffs current alleged asbestos-related disease and is predicated on the assumption that all the cases qualify for payment under the terms of this Agreement. However, if a case does not qualify for payment or if the case qualifies but the plaintiff refuses to accept the settlement amount, then the total settlement figure will be reduced by the agreed-to allocated amount set forth below for the alleged disease and that case will be removed from the settlement and all rights of that plaintiff will be preserved in accordance with the provisions of this Agreement as if this Agreement did not exist.

Assuming that all plaintiffs qualify and accept as indicated above, the total amount of this settlement is . Should an individual plaintiff reject the recommendations of plaintiff's counsel to settle with the CCR, then the total settlement fund shall be reduced based on the following disease values:

Mesothelioma
Lung Cancer
Other Cancer
Non-Malignant
Non-Malignant (Premises)

5. It is agreed between the CCR and Plaintiff Counsel that all accepting plaintiffs' cases shall be settled in accordance with the procedures outlined below:

- a. Within fifteen (15) days of the date of this Agreement, Plaintiff Counsel will provide to the CCR Attachment "A".

b. No case will be eligible for payment until Plaintiff Counsel provides, as to that case, the following:

- (1) Evidence that the plaintiff was exposed to materials containing asbestos manufactured, sold, marketed or distributed by a member of the CCR. For the purposes of satisfying this requirement, the CCR and Plaintiff Counsel agree that any jobsite that has been accepted by CCR in the past as a jobsite on which asbestos-containing products were manufactured, sold, marketed or distributed by a member of CCR will be accepted in these cases, provided that the plaintiff demonstrates presence at that jobsite at the appropriate time.

A list of the agreed jobsites and exposure periods will be attached to this Agreement as Attachment "B". In the absence of an agreement, plaintiff must provide an affidavit of the plaintiff, deposition testimony or co-worker affidavit, or other evidence acceptable to CCR to demonstrate exposure.

- (2) For each case submitted, Plaintiff Counsel shall immediately make available to the CCR appropriate medical verification from a licensed physician upon whom Plaintiff Counsel relies, to demonstrate that the plaintiff has contracted the asbestos-related disease claimed in Attachment "A". For the purpose of meeting this requirement, a medical record or report from a licensed physician providing a diagnosis of an asbestos-related injury as alleged by the plaintiff shall be sufficient. A record establishing the existence of a primary lung cancer or a mesothelioma shall be sufficient in and of itself.
- (3) The information required by this paragraph 5.b. will be submitted to the CCR for each plaintiff not later than one hundred twenty (120) days

prior to the date of the scheduled payment for the plaintiff, except that the information will be provided within ninety (90) days as to each plaintiff whose scheduled payment occurs on or before June 1, 1993. An Attachment "C", which is a CCR processing form that will be supplied to Plaintiff Counsel by the CCR, must also be submitted for each plaintiff in addition to the information required above.

- (4) The CCR and Plaintiff Counsel agree that if appropriate documentation is not provided for a case at the appropriate time then that case will be removed from the settlement (until such time as proper documentation is received) and the total settlement amount will be reduced by the amount which would then have been allocated to that case, according to the amounts listed in paragraph 4, above, except that Plaintiff Counsel can substitute for any non-qualifying case any other qualifying case on Attachment "A".
- c. Provided that a plaintiff has submitted all the required information and documentation listed herein, the CCR will generate and forward a Release for that plaintiff which fully releases the CCR members from all future liability for asbestos personal injury claims to the claimant and any persons claiming by or through the plaintiff or for plaintiff's alleged injuries, within sixty (60) days before the scheduled payment date, except that the releases will be provided within thirty (30) days before the scheduled payment date for any plaintiff who is scheduled for payment on or before June 1, 1993. Attachment "D" to this Agreement is the release form which will be executed by each of the plaintiffs.
- d. It is agreed that payments will be made in the following amounts on the following dates:

15 May 93
 15 Oct 93
 15 May 94
 15 Sep 94
 15 May 95
 15 May 96
 15 Apr 97

Should an individual with a non-malignant claim develop an asbestos-related cancer prior to the time that the plaintiff is due to receive settlement from the CCR, then that claimant shall be entitled to be compensated at the rate for the asbestos-related cancer rather than any lower rate. Should such an increase in payment result in the total settlement fund's being increased, the increase shall be in an amount equal to the amount for the particular cancer as set forth in paragraph 4, above, less the amount that as [sic] already allocated to the plaintiff for the disease originally claimed.

6. It is understood that the scope of this settlement includes any and all companion or related actions filed in any jurisdiction by the plaintiffs identified in Attachment "A". Any payment made under this Agreement shall include all claims, if any, for loss of support, services, consortium, companionship, society and other valuable services rendered by a spouse, family member or close companion however such claims are denominated, including without limitation, wrongful death or survival actions. Spouses, heirs, representative or other individuals with such claims shall be bound by this Agreement and shall execute all necessary settlement documentation to effectuate its terms. However, the parties do not intend to discharge any claim which the spouse or children of an exposed plaintiff may have in the future for any asbestos-related illness which they may develop.

7. It is further agreed that the parties will make good faith efforts to resolve any disputes which may arise while carrying out the terms and conditions of this settlement agreement. If the parties are unable to resolve a dispute, the issue shall be referred to a mutually agreeable mediator or arbiter for binding resolution. If the parties are unable to mutually agree upon an arbiter, then each

party shall select its' [sic] arbiter and the two arbiters so selected shall select a third arbiter. The losing party shall be responsible for payment of the costs associated with arbitration. Any disputes concerning the interpretation or performance under this agreement shall be resolved in accordance with the laws of the state of the residence of the plaintiff's counsel to the agreement. The law applicable to the individual's claim shall be the law of the jurisdiction where the claim has been filed against other co-defendants. In the event the plaintiff has not filed a lawsuit against any defendant, applicable law shall be based on plaintiff's state of residence.

AGREED TO AND ACCEPTED THIS 11TH DAY OF JUNE, 1993.

/s/ MICHAEL F. ROONEY, Chief Operating Officer
 Center for Claims Resolution

/s/ JAMES F. HUMPHREYS

/s/ JOSEPH F. RICE*

Ness, Motley, Loadholt, Richardson & Poole

*Further, the law firm of Ness, Motley, Loadholt, Richardson & Poole shall be bound by the terms and conditions of this Agreement to the extent that they are co-counsel to any of the plaintiffs herein.

* * * *

SETTLEMENT AGREEMENT

This Agreement is executed by and between the Center For Claims Resolution ("CCR") as sole agent for its members and James F. Humphreys of the law firm of James F. Humphreys (hereinafter referred to as Plaintiff Counsel) individually and as agents for and on behalf of Plaintiff Counsel. This Agreement supersedes all prior agreements by and between these parties which relate to procedures for handling future claims, specifically including the agreement of April 27, 1993.

1. CCR agrees to offer to all future clients of Plaintiff Counsel, alleging a claim for non-malignant asbestos-related disease that is not included within the categories listed in paragraph 5, and which claim is not barred by the statute of limitations of the applicable jurisdiction, the right to participate in alternative dispute

resolution with CCR under which the client may forego or defer filing and litigating a claim against CCR and its current members, and the statute of limitations will be tolled as against CCR members.

2. Plaintiff Counsel believes that the criteria set forth in paragraph 5 is [sic] fair and reasonable criteria and acceptance of CCR's offer will be in the interest of its future clients who do not have a medical condition described in paragraph 5, in that it protects such clients from being forced prematurely to litigate, or settle and release their claims for asbestos injury. Plaintiff Counsel therefore agrees, unless in the exercise of its independent professional judgment, given some unforeseen circumstances, it determines otherwise, to recommend that its clients seriously consider, and accordingly will use its best efforts to encourage, each client to accept this alternative dispute resolution procedure. With respect to all clients who accept this alternative dispute resolution procedure, Plaintiff Counsel agrees to defer filing any asbestos-related personal injury claims against CCR or any of its current members until such time, if ever, as the claimant develops one of the asbestos-related diseases described in paragraph 5.

3. In the event a potential or future Plaintiff Counsel client chooses not to accept CCR's offer and so notifies CCR, and Plaintiff Counsel determines that it wishes to continue representation, the statute of limitations shall be tolled for a period not to exceed sixty days after notification, whereupon the complaint may be filed and served.

4. Similarly, in the event a potential or future client chooses not to accept CCR's offer and so notifies CCR, and Plaintiff Counsel determines that it wishes to decline or cease representation, the statute of limitations as to said individual's existing claim shall be tolled for a period not to exceed one hundred twenty (120) days after notification while the individual seeks new counsel.

5. CCR's alternative dispute resolution offer, as described above, pertains to individuals who retain Plaintiff Counsel and who do not have one of the following asbestos-related diagnoses:

- a. An asbestos-related malignancy; or
- b. Non-malignant asbestos-related changes with a chest x-ray of 1/0 and pulmonary function abnormalities as shown by

either (a) FVC less than 80% of predicted with an FEV-1/FVC ratio (actual) greater than or equal to 75%; or (b) TLC less than 80% of predicted with a DLCO less than or equal to 75% of predicted; or (c) TLC less than 80% of predicted with bilateral basilar crackles which are stated by a licensed physician to be the result of the underlying lung disease; or

- c. Non-malignant asbestos-related changes with a chest x-ray of 1/1 or greater and pulmonary function abnormalities as shown by either (a) FVC less than 80% of predicted with FEV-1/FVC ratio greater than or equal to 72% (actual); or (b) TLC less than 80% of predicted; or
- d. A diagnosis by a licensed pathologist of asbestosis based on the CAP-NIOSH 1982 criteria; or
- e. Non-malignant asbestos-related changes with a chest x-ray showing bilateral pleural changes of extent C2 accompanied by the same pulmonary function testing requirements as set forth in paragraph 5.c. above, or bilateral pleural changes of extent B2 accompanied by the same pulmonary function testing requirements as set forth in paragraph 5.b. above.

6. Any Plaintiff Counsel future client who accepts the offer herein described shall not be deemed to have settled any claim with CCR, and in the event an accepting client brings suit against any other entity for an asbestos related condition, the acceptance of the offer shall not in any respect (a) preclude any other entity or defendant from impleading CCR members for contribution or indemnity or (b) preclude the CCR or its members from defending an action for contribution or indemnity.

7. As to any future client who accepts this alternative dispute resolution offer, if that client obtains a judgment in the tort system for an asbestos-related personal injury claim, against a defendant that is not a CCR member, such judgment shall not affect in any way the client's right of action against a CCR member pursuant to this Agreement; provided however, that any damage award recovered or settlement received for that claim shall be treated as a prior settlement under applicable law, and, accordingly, shall be entitled to any set-offs, credits, or other reductions in any verdict

or award against a CCR member on account of such prior damage award or settlement as prescribed by the applicable law.

8. Subject to paragraph 11 below, this agreement shall remain in full force and effect unless and until the Stipulation of Settlement in *Carlough v. Amchem Products, Inc.*, C.A. No. 93-0215 (E.D. Pa.) is finally approved by the Court, with all appeals, if any, exhausted. Upon final approval of the *Carlough* settlement, which includes medical criteria substantially comparable to the criteria of paragraph 5, this Agreement shall be superseded by *Carlough*, except for those who have chosen to opt out in accordance with the orders of the Court.

9. The terms of this Agreement shall remain confidential between the parties, their principals and their counsel unless mutually agreed otherwise by the CCR and Plaintiff Counsel, or when necessary to comply with court orders, or in an action to enforce the terms and conditions of this Agreement itself.

10. If the validity or enforcement of any provision in this agreement is challenged in any legal proceeding, Plaintiff Counsel agrees to notify CCR of such challenge so that appropriate steps can be taken to respond to the challenge. If final judgement is rendered, by an appropriate court, with all appeals exhausted, holding the provision unethical or unlawful, then the provision so interpreted shall be deemed null and void and severable from the remaining portion of the Agreement. The balance of the Agreement shall remain in full force and effect.

11. This Agreement constitutes the entire understanding between the parties concerning the subject matter contained herein. No modification of any provision of this Agreement shall be valid and the same may not be terminated or abandoned except by a writing signed by the parties to this Agreement.

AGREED TO AND ACCEPTED THIS 11TH DAY OF JUNE, 1993.

/s/ JAMES F. HUMPHREYS
Law Firm of James F. Humphreys

/s/ MICHAEL F. ROONEY, Chief Operating Officer
Center for Claims Resolution

/s/JOSEPH F. RICE*

Ness, Motley, Loadholt, Richardson & Poole

*Further, the law firm of Ness, Motley, Loadholt, Richardson & Poole shall be bound by the terms and conditions of this Agreement to the extent that they are co-counsel to any of the plaintiffs herein.

6/10/93

* * * *

CCR SETTLEMENT AGREEMENT

AND NOW, in confirmation of an agreement in principle made between the parties listed below on or about the 11th day of November, 1992, the following Agreement is executed by and between the Center For Claims Resolution ("CCR"), on behalf of its members as of the date of this Agreement, and David L. Meade, of the law firm of Shinaberry, Meade & Venezia (hereinafter referred to as Plaintiff Counsel), as agents for and on behalf of the plaintiffs/claimants ("plaintiffs") represented by them jointly or separately in the asbestos personal injury litigation in the State of West Virginia. Further, the law firm of Ness, Motley, Loadholt, Richardson & Poole shall be bound by the terms and conditions of this Agreement to the extent that they are co-counsel to any plaintiffs herein. This Agreement supersedes all prior agreements by and between these parties which relate to the settlement of pending claims, specifically including the agreement of May 14, 1993.

1. The terms of this Agreement shall remain confidential between the parties, their principals, and their counsel unless mutually agreed otherwise by the CCR and Plaintiff Counsel, or when necessary to comply with court orders, or in an action to enforce the terms and conditions of this settlement Agreement itself.

2. The cases that are subject to this Agreement consist of the following disease mix:

Disease	No. of Cases
Mesothelioma	10
Lung Cancer	51
Other Cancer	18
Non-Malignant	<u>1,442</u>
Total	1,521

3. Attachment "A" is a list of all plaintiffs whose cases/claims are being settled under the terms of this Agreement. Attachment "A" identifies the injured party's name, social security number and spouse's name, the court in which the case is filed or would have been filed, the docket number, the alleged disease and, if applicable, the estate representative's name and capacity. Plaintiff Counsel agrees to recommend to each plaintiff/claimant identified on Attachment "A" the acceptance of the settlement amount allocated to each such plaintiff's case.

4. The settlement of these cases is based upon each plaintiff's current alleged asbestos-related disease and is predicated on the assumption that all the cases qualify for payment under the terms of this Agreement. However, if a case does not qualify for payment or if the case qualifies but the plaintiff refuses to accept the settlement amount, then the total settlement figure will be reduced by the agreed-to allocated amount set forth below for the alleged disease and that case will be removed from the settlement and all rights of that plaintiff will be preserved in accordance with the provisions of this Agreement as if this Agreement did not exist.

Assuming that all plaintiffs qualify and accept as indicated above, the total amount of this settlement is . Should an individual plaintiff reject the recommendations of plaintiff's counsel to settle with the CCR, then the total settlement fund shall be reduced based on the following disease values:

Mesothelioma
Lung Cancer
Other Cancer
Non-Malignant
Non-Malignant (Premises)

5. It is agreed between the CCR and Plaintiff Counsel that all accepting plaintiffs' cases shall be settled in accordance with the procedures outlined below:

- a. Within fifteen (15) days of the date of this Agreement, Plaintiff Counsel will provide to the CCR Attachment "A".
- b. No case will be eligible for payment until Plaintiff Counsel provides, as to that case, the following:

- (1) Evidence that the plaintiff was exposed to materials containing asbestos manufactured, sold, marketed or distributed by a member of the CCR. For the purposes of satisfying this requirement, the CCR and Plaintiff Counsel agree that any jobsite that has been accepted by CCR in the past as a jobsite on which asbestos-containing products were manufactured, sold, marketed or distributed by a member of CCR will be accepted in these cases, provided that the plaintiff demonstrates presence at that jobsite at the appropriate time. A list of the agreed Jobsites and exposure periods will be attached to this Agreement as Attachment "B". In the absence of an agreement, plaintiff must provide an affidavit of the plaintiff, deposition testimony or co-worker affidavit, or other evidence acceptable to CCR to demonstrate exposure.

- (2) For each case submitted, Plaintiff Counsel shall immediately make available to the CCR appropriate medical verification from a licensed physician upon whom Plaintiff Counsel relies, to demonstrate that the plaintiff has contracted the asbestos-related disease claimed in Attachment "A". For the purpose of meeting this requirement, a medical record or report from a licensed physician providing a diagnosis of an asbestos-related injury as alleged by the plaintiff shall be sufficient. A record

establishing the existence of a primary lung cancer or a mesothelioma shall be sufficient in and of itself.

- (3) The information required by this paragraph 5.b. will be submitted to the CCR for each plaintiff not later than one hundred twenty (120) days prior to the date of the scheduled payment for the plaintiff, except that the information will be provided within ninety (90) days as to each plaintiff whose scheduled payment occurs on or before June 1, 1993. An Attachment "C", which is a CCR processing form that will be supplied to Plaintiff Counsel by the CCR, must also be submitted for each plaintiff in addition to the information required above.
 - (4) The CCR and Plaintiff Counsel agree that if appropriate documentation is not provided for a case at the appropriate time then that case will be removed from the settlement (until such time as proper documentation is received) and the total settlement amount will be reduced by the amount which would then have been allocated to that case, according to the amounts listed in paragraph 4, above, except that Plaintiff Counsel can substitute for any non-qualifying case any other qualifying case on Attachment "A".
- c. Provided that a plaintiff has submitted all the required information and documentation listed herein, the CCR will generate and forward a Release for that plaintiff which fully releases the CCR members from all future liability for asbestos personal injury claims to the claimant and any persons claiming by or through the plaintiff or for plaintiff's alleged injuries, within sixty (60) days before the scheduled payment date, except that the releases will be provided within thirty (30) days before the scheduled payment date for any plaintiff who is scheduled for payment on or before June 1,

1993. Attachment "D" to this Agreement is the release form which will be executed by each of the plaintiffs.

- d. It is agreed that payments will be made in the following amounts on the following dates:

15 May 93

15 Oct 93

15 May 94

15 Sep 94

15 May 95

Should an individual with a non-malignant claim develop an asbestos-related cancer prior to the time that the plaintiff is due to receive settlement from the CCR, then that claimant shall be entitled to be compensated at the rate for the asbestos-related cancer rather than any lower rate. Should such an increase in payment result in the total settlement fund's being increased, the increase shall be in an amount equal to the amount for the particular cancer as set forth in paragraph 4, above, less the amount that as [sic] already allocated to the plaintiff for the disease originally claimed.

6. It is understood that the scope of this settlement includes any and all companion or related actions filed in any jurisdiction by the plaintiffs identified in Attachment "A". Any payment made under this Agreement shall include all claims, if any, for loss of support, services, consortium, companionship, society and other valuable services rendered by a spouse, family member or close companion however such claims are denominated, including without limitation, wrongful death or survival actions. Spouses, heirs, representative or other individuals with such claims shall be bound by this Agreement and shall execute all necessary settlement documentation to effectuate its terms. However, the parties do not intend to discharge any claim which the spouse or children of an exposed plaintiff may have in the future for any asbestos-related illness which they may develop.

7. It is further agreed that the parties will make good faith efforts to resolve any disputes which may arise while carrying out

the terms and conditions of this settlement agreement. If the parties are unable to resolve a dispute, the issue shall be referred to a mutually agreeable mediator or arbiter for binding resolution. If the parties are unable to mutually agree upon an arbiter, then each party shall select its' [sic] arbiter and the two arbiters so selected shall select a third arbiter. The losing party shall be responsible for payment of the costs associated with arbitration. Any disputes concerning the interpretation or performance under this agreement shall be resolved in accordance with the laws of the state of the residence of the plaintiff's counsel to the agreement. The law applicable to the individual's claim shall be the law of the jurisdiction where the claim has been filed against other co-defendants. In the event the plaintiff has not filed a lawsuit against any defendant, applicable law shall be based on plaintiff's state of residence.

AGREED TO AND ACCEPTED THIS 11TH DAY OF JUNE, 1993.

/s/ MICHAEL F. ROONEY, Chief Operating Officer
Center for Claims Resolution

/s/ DAVID L. MEADE
Shinaberry, Meade & Venezia

/s/ JOSEPH F. RICE* for Ness, Motley, et al.

*Further, the law firm of Ness, Motley, Loadholt, Richardson & Poole shall be bound by the terms and conditions of this Agreement to the extent that they are co-counsel to any of the plaintiffs herein.

6/10/93

* * * *

SETTLEMENT AGREEMENT

This Agreement is executed by and between the Center For Claims Resolution ("CCR") as sole agent for its members and David L. Meade, of the law firm of Shinaberry, Meade & Venezia (hereinafter referred to as Plaintiff Counsel) individually and as agents for and on behalf of Plaintiff Counsel. This Agreement supersedes all prior agreements by and between these parties which

relate to procedures for handling future claims, specifically including the agreement of May 14, 1993.

1. CCR agrees to offer to all future clients of Plaintiff Counsel, alleging a claim for non-malignant asbestos-related disease that is not included within the categories listed in paragraph 5, and which claim is not barred by the statute of limitations of the applicable jurisdiction, the right to participate in alternative dispute resolution with CCR under which the client may forego or defer filing and litigating a claim against CCR and its current members, and the statute of limitations will be tolled as against CCR members.

2. Plaintiff Counsel believes that the criteria set forth in paragraph 5 is [sic] fair and reasonable criteria and acceptance of CCR's offer will be in the interest of its future clients who do not have a medical condition described in paragraph 5, in that it protects such clients from being forced prematurely to litigate, or settle and release their claims for asbestos injury. Plaintiff Counsel therefore agrees, unless in the exercise of its independent professional judgment, given some unforeseen circumstances, it determines otherwise, to recommend that its clients seriously consider, and accordingly will use its best efforts to encourage, each client to accept this alternative dispute resolution procedure. With respect to all clients who accept this alternative dispute resolution procedure, Plaintiff Counsel agrees to defer filing any asbestos-related personal injury claims against CCR or any of its current members until such time, if ever, as the claimant develops one of the asbestos-related diseases described in paragraph 5.

3. In the event a potential or future Plaintiff Counsel client chooses not to accept CCR's offer and so notifies CCR, and Plaintiff Counsel determines that it wishes to continue representation, the statute of limitations shall be tolled for a period not to exceed sixty days after notification, whereupon the complaint may be filed and served.

4. Similarly, in the event a potential or future client chooses not to accept CCR's offer and so notifies CCR, and Plaintiff Counsel determines that it wishes to decline or cease representation, the statute of limitations as to said individual's existing claim shall

be tolled for a period not to exceed one hundred twenty (120) days after notification while the individual seeks new counsel.

5. CCR's alternative dispute resolution offer, as described above, pertains to individuals who retain Plaintiff Counsel and who do not have one of the following asbestos-related diagnoses:

- a. An asbestos-related malignancy; or
- b. Non-malignant asbestos-related changes with a chest x-ray of 1/0 and pulmonary function abnormalities as shown by either (a) FVC less than 80% of predicted with an FEV-1/FVC ratio (actual) greater than or equal to 75%; or (b) TLC less than 80% of predicted with a DLCO less than or equal to 75% of predicted; or (c) TLC less than 80% of predicted with bilateral basilar crackles which are stated by a licensed physician to be the result of the underlying lung disease; or
- c. Non-malignant asbestos-related changes with a chest x-ray of 1/1 or greater and pulmonary function abnormalities as shown by either (a) FVC less than 80% of predicted with FEV-1/FVC ratio greater than or equal to 72% (actual); or (b) TLC less than 80% of predicted; or
- d. A diagnosis by a licensed pathologist of asbestosis based on the CAP-NIOSH 1982 criteria; or
- e. Non-malignant asbestos-related changes with a chest x-ray showing bilateral pleural changes of extent C2 accompanied by the same pulmonary function testing requirements as set forth in paragraph 5.c. above, or bilateral pleural changes of extent B2 accompanied by the same pulmonary function testing requirements as set forth in paragraph 5.b. above.

6. Any Plaintiff Counsel future client who accepts the offer herein described shall not be deemed to have settled any claim with CCR, and in the event an accepting client brings suit against any other entity for an asbestos-related condition, the acceptance of the offer shall not in any respect (a) preclude any other entity or defendant from impleading CCR members for contribution or

indemnity or (b) preclude the CCR or its members from defending an action for contribution or indemnity.

7. As to any future client who accepts this alternative dispute resolution offer, if that client obtains a judgment in the tort system for an asbestos-related personal injury claim, against a defendant that is not a CCR member, such judgment shall not affect in any way the client's right of action against a CCR member pursuant to this Agreement; provided however, that any damage award recovered or settlement received for that claim shall be treated as a prior settlement under applicable law, and, accordingly, shall be entitled to any set-offs, credits, or other reductions in any verdict or award against a CCR member on account of such prior damage award or settlement as prescribed by the applicable law.

8. Subject to paragraph 11 below, this agreement shall remain in full force and effect unless and until the Stipulation of Settlement in *Carlough v. Amchem Products, Inc.*, C.A. No. 93-0215 (E.D. Pa.) is finally approved by the Court, with all appeals, if any, exhausted. Upon final approval of the *Carlough* settlement, which includes medical criteria substantially comparable to the criteria of paragraph 5, this Agreement shall be superseded by *Carlough*, except for those who have chosen to opt out in accordance with the orders of the Court.

9. The terms of this Agreement shall remain confidential between the parties, their principals and their counsel unless mutually agreed otherwise by the CCR and Plaintiff Counsel, or when necessary to comply with court orders, or in an action to enforce the terms and conditions of this Agreement itself.

10. If the validity or enforcement of any provision in this agreement is challenged in any legal proceeding, Plaintiff Counsel agrees to notify CCR of such challenge so that appropriate steps can be taken to respond to the challenge. If final judgement is rendered, by an appropriate court, with all appeals exhausted, holding the provision unethical or unlawful, then the provision so interpreted shall be deemed null and void and severable from the remaining portion of the Agreement. The balance of the Agreement shall remain in full force and effect.

11. This Agreement constitutes the entire understanding between the parties concerning the subject matter contained herein.

6/10/93

It is further understood and agreed that should the total case count either exceed or be lower than the disease breakdowns as indicated in this letter, the settlement will be subject to adjustment by agreement (either upward or downward) in accordance with the above agreed upon values by disease.

The terms of the payment for the above-settlement will be mutually agreed upon and will commence no sooner than the end of the first quarter 1993 and will end no later than the end of the fourth quarter of 1996.

It is further understood that in the future Greitzer and Locks will not handle or process claims against the CCR defendants unless they meet certain mutually agreeable disease criteria.

Very truly yours,

/s/ LEE B. BALEFSKY

LBB: eh

cc: Gene Locks, Esquire

* * * *

December 11, 1992

Kevin Guers, Esquire
Center For Claims Resolution
116-300 Village Boulevard
CN5319
Princeton, NJ 08540

**Re: Greitzer and Locks Pennsylvania Case Settlements
with Center for Claims Resolution**

Dear Kevin:

This letter will confirm that the payment schedule for the 2,602 Pennsylvania cases our office settled on October 26, 1992, will be paid in full by December 31, 1996. The payment schedule will be as follows:

First Quarter 1993
Second Quarter 1993
Third Quarter 1993

Fourth Quarter 1993
First Quarter 1994
Second Quarter 1994
Third Quarter 1994
Fourth Quarter 1994
First Quarter 1995
Second Quarter 1995
Third Quarter 1995
Fourth Quarter 1995
First Quarter 1996
Second Quarter 1996
Third Quarter 1996
Fourth Quarter 1996

TOTAL

Very truly yours

/s/ GENE LOCKS

* * * *

July 9, 1993

Michael Rooney, Esquire
Center for Claims Resolution
CN 5319
116-300 Village Boulevard
Princeton, NJ 08540

Re: Greitzer and Locks Settlements of Present Cases

Dear Mike:

This letter is to confirm and memorialize our prior understanding concerning the agreement between Greitzer and Locks and CCR companies concerning future claimants.

At the time we negotiated the settlements for our present clients, we agreed that if ever mutually acceptable medical disease criteria were to be agreed to in a class action, we would adopt those criteria for each of our settlements for future claimants. We, of course, never intended that Greitzer and Locks nor CCR would enter into any settlement which would be a violation of any canon of ethics or the model code of professional responsibility.

To clarify what we always agreed to and what was always our understanding, we stated that our firm would use its best efforts to encourage and would recommend that our future clients defer litigation against the CCR defendants until that claimant's medical condition satisfied the mutually acceptable medical criteria set forth in *Carlough*. We will make this recommendation in exchange for a tolling of the statute of limitations and in exchange for future nonmalignant and malignant "insurance policies" because this is advisable and in the best interests of our future clients, unless in the exercise of our independent professional judgment, given some unforeseen circumstance, we conclude otherwise for a particular client.

Michael Rooney, Esquire
June 21, 1993
Page 2

As you also know, we made this agreement because we believe this alternative procedure is better than and more valuable than the existing system for any of our future clients who do not meet the medical criteria. Most important, it protects them from being compelled to prematurely litigate, settle, or release their claims against the CCR defendants.

Despite our recommendation that we believe our future clients should accept the fair and reasonable medical criteria we agreed to in *Carlough*, and as we always indicated and agreed, in the event a potential future client of our firm should not wish to accept our recommendation, we would notify the CCR. In addition, it was always understood and agreed that we could and would, if we chose, represent that client against the CCR as well as all other defendants.

Regards

/s/ GENE LOCKS

GL:jlmm

SETTLING PARTIES' EXHIBIT SP-303

TOTAL SETTLEMENT AMOUNTS PAYABLE TO NESS, MOTLEY AND AFFILIATED COUNSEL AND TO GREITZER AND LOCKS

Ness, Motley, Loadholt, Richardson & Poole and their Affiliated Counsel:	\$138,077,100
Greitzer and Locks:	77,417,000



SETTLING PARTIES' EXHIBIT SP-502

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
 ALL CCR CANCER CLAIMS BY STATE, SETTLEMENT DATE AND DISEASE
 EXCLUDES ZERO DOLLAR PAYMENTS
 SASFILE CCR92315

STATE	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
AK	2	105,200	52,600	0	0	0	0	0	0	0	0	0	2	105,200	52,600
AL	7	180,223	25,746	25	515,561	20,622	6	72,256	12,043	177	1,459,491	8,246	215	2,227,531	10,361
AR	11	396,232	36,021	28	626,623	22,379	2	10,500	5,250	354	3,384,867	9,562	395	4,418,223	11,185
AZ	3	221,280	73,760	3	47,318	15,773	0	0	0	34	363,847	10,701	40	632,445	15,811
CA	340	17,817,652	52,405	564	7,932,561	14,065	88	506,609	5,757	4,481	22,667,480	5,059	5,473	48,924,302	8,939
CO	8	733,729	91,716	9	159,079	17,675	1	13,659	13,659	103	854,797	8,299	121	1,761,263	14,556
CT	24	1,384,207	57,675	55	1,043,202	18,967	14	105,090	7,506	161	1,323,721	8,222	254	3,856,220	15,182
DC	6	833,756	138,959	13	404,133	31,087	2	35,000	17,500	122	1,486,658	12,186	143	2,759,547	19,298
DE	16	1,088,314	68,020	20	695,595	34,780	7	120,000	17,143	187	2,162,860	11,566	230	4,066,770	17,682
FL	105	6,254,535	59,567	151	4,225,756	27,985	43	711,869	16,555	1,422	12,293,412	8,645	1,721	23,485,572	13,646
GA	12	1,113,317	92,776	56	1,217,282	21,737	5	27,659	5,532	793	6,501,043	8,198	866	8,859,301	10,230
GU	0	0	0	10	22,000	2,200	0	0	0	332	730,400	2,200	342	752,400	2,200
HI	23	876,402	38,104	31	473,329	15,269	4	21,438	5,359	317	753,452	2,377	375	2,124,620	5,666

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
ALL CCR CANCER CLAIMS BY STATE, SETTLEMENT DATE AND DISEASE
EXCLUDES ZERO DOLLAR PAYMENTS
SASFILE CCR92315

STATE	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
IA	7	301,500	43,071	25	534,017	21,361	2	10,844	5,422	1,001	1,855,222	1,853	1,035	2,701,582	2,610
ID	3	104,241	34,747	1	12,581	12,581	0	0	0	2	17,973	8,986	6	134,794	22,466
IL	59	2,957,193	50,122	167	3,067,618	18,369	46	426,382	9,269	1,939	8,406,426	4,335	2,211	14,857,620	6,720
IN	7	242,662	34,666	2	18,750	9,375	1	38,750	38,750	16	132,250	8,266	26	432,412	16,631
KS	0	0	0	1	3,235	3,235	0	0	0	20	343,475	17,174	21	346,710	16,510
KY	2	373,235	186,618	13	268,729	20,671	2	33,235	16,618	147	1,414,239	9,621	164	2,089,438	12,740
LA	29	924,363	31,875	52	558,665	10,744	12	105,163	8,764	309	2,656,692	8,598	402	4,244,883	10,559
MA	177	2,640,061	14,916	339	2,663,212	7,856	168	756,787	4,505	3,702	7,136,369	1,928	4,386	13,196,430	3,009
MD	32	3,721,653	116,302	108	7,024,964	65,046	24	491,438	20,477	1,182	14,471,561	12,243	1,346	25,709,617	19,101
ME	20	232,735	11,637	6	53,500	8,917	1	4,000	4,000	56	78,318	1,399	83	368,553	4,440
MI	81	6,241,134	77,051	95	3,675,779	38,692	27	400,170	14,821	873	9,600,157	10,997	1,076	19,917,239	18,510
MN	19	2,749,189	144,694	23	719,837	31,297	3	101,250	33,750	129	3,889,576	30,152	174	7,459,852	42,873
MO	18	1,471,180	81,732	28	1,040,576	37,163	1	11,500	11,500	155	1,673,104	10,794	202	4,196,360	20,774
MS	83	1,959,617	23,610	225	2,664,223	11,841	7	119,499	17,071	5,183	21,336,050	4,117	5,498	26,079,390	4,743

THIS PAGE AND SUBSEQUENT PAGES ARE NOT
TO BE USED FOR ANY OTHER PURPOSES
EXCEPT FOR THE PAYMENT OF
TWO DOLLAR PAYMENTS

DATE	AMOUNT	REMARKS
1/1/50	2.00	PAYMENT
2/1/50	2.00	PAYMENT
3/1/50	2.00	PAYMENT
4/1/50	2.00	PAYMENT
5/1/50	2.00	PAYMENT
6/1/50	2.00	PAYMENT
7/1/50	2.00	PAYMENT
8/1/50	2.00	PAYMENT
9/1/50	2.00	PAYMENT
10/1/50	2.00	PAYMENT
11/1/50	2.00	PAYMENT
12/1/50	2.00	PAYMENT

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
ALL CCR CANCER CLAIMS BY STATE, SETTLEMENT DATE AND DISEASE
EXCLUDES ZERO DOLLAR PAYMENTS
SASFILE CCR92315

STATE	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
MT	3	142,544	47,515	4	6,758	1,689	1	108	108	61	103,888	1,703	69	253,298	3,671
NC	20	1,509,874	75,494	38	1,032,338	27,167	1	25,000	25,000	178	1,706,659	9,588	237	4,273,871	18,033
ND	2	35,945	17,973	0	0	0	0	0	0	11	100,473	9,134	13	136,418	10,494
NE	1	28,756	28,756	0	0	0	0	0	0	6	58,231	9,705	7	86,987	12,427
NH	6	222,225	37,038	8	87,701	10,963	2	8,000	4,000	75	232,015	3,094	91	549,941	6,043
NJ	116	7,209,684	62,152	121	3,341,686	27,617	20	266,739	13,337	1,513	15,852,848	10,478	1,770	26,670,957	15,068
NM	2	61,107	30,553	7	96,466	13,781	0	0	0	58	395,961	6,827	67	553,533	8,262
NY	217	20,572,042	94,802	374	19,774,393	52,873	77	1,668,985	21,675	1,973	29,386,343	14,894	2,641	71,401,763	27,036
OH	50	2,097,610	41,952	74	1,820,366	24,600	19	210,208	11,064	2,482	10,035,123	4,043	2,625	14,163,306	5,396
OK	9	794,565	88,285	11	234,555	21,323	0	0	0	458	552,665	1,207	478	1,581,786	3,309
OR	39	1,178,107	30,208	5	74,998	15,000	0	0	0	68	269,173	3,958	112	1,522,278	13,592
PA	173	10,479,728	60,576	478	15,877,520	33,217	112	1,597,823	14,266	5,850	51,678,973	8,834	6,613	79,634,045	12,042
RI	12	607,309	50,609	9	368,348	40,928	4	26,959	6,740	23	246,144	10,702	48	1,248,760	26,016
SC	13	1,024,713	78,824	30	1,064,820	35,494	0	0	0	107	1,709,742	15,979	150	3,799,275	25,328

PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
ALL CCR CANCER CLAIMS BY STATE, SETTLEMENT DATE AND DISEASE
EXCLUDES ZERO DOLLAR PAYMENTS
SASFILE CCR92315

STATE	DISEASE														
	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT			TOTAL		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
SD	2	334,289	167,144	0	0	0	0	0	0	0	0	0	2	334,289	167,144
TN	23	1,029,278	44,751	43	802,986	18,674	1	71,890	71,890	840	1,626,912	1,937	907	3,531,065	3,893
TX	121	12,627,397	104,359	396	8,340,665	21,062	87	1,340,210	15,405	5,082	52,794,238	10,388	5,686	75,102,509	13,208
UT	0	0	0	1	55,000	55,000	0	0	0	24	258,115	10,755	25	313,115	12,525
VA	68	5,075,964	74,647	51	1,642,577	32,207	8	96,063	12,008	545	5,091,611	9,342	672	11,906,215	17,718
VI	0	0	0	0	0	0	0	0	0	4	169,660	42,415	4	169,660	42,415
VT	0	0	0	0	0	0	0	0	0	9	11,500	1,278	9	11,500	1,278
WA	109	2,552,200	23,415	113	1,518,088	13,434	2	19,231	9,615	863	5,206,346	6,033	1,087	9,295,865	8,552
WI	13	506,283	38,945	4	61,980	15,495	1	12,500	12,500	27	259,397	9,607	45	840,160	18,670
WV	42	1,544,074	36,764	130	3,783,793	29,106	14	203,768	14,555	2,507	19,843,057	7,915	2,693	25,374,691	9,422
WY	3	59,309	19,770	1	3,595	3,595	0	0	0	2	3,595	1,797	6	66,498	11,083
ALL STATES	2,138	124,616,610	58,287	3,948	99,656,756	25,242	815	9,670,581	11,866	45,963	324,586,110	7,062	52,864	558,530,057	10,565

CENTER FOR CLAIMS RESOLUTION
ALL FILINGS BY CALENDAR YEAR
BY DISEASE

As of July 5, 1992

DISEASE	CALENDAR YEAR					
	<u>1989</u>	<u>1990</u>		<u>1991</u>		<u>ALL YEARS</u>
	#	%	#	%	#	%
MESOTHELIOMA	736	3.43%	749	3.11%	683	2.99%
LUNG CANCER	1,325	6.17%	1,102	4.58%	860	3.77%
OTHER CANCER	332	1.55%	360	1.50%	231	1.01%
SUBTOTAL MALIGNANT	2,393	11.14%	2,211	9.19%	1,774	7.78%
NON- MALIGNANT	19,093	88.86%	21,838	90.91%	21,039	92.22%
ALL DISEASES	<u>21,486</u>	100.00%	<u>24,049</u>	100.00%	<u>22,813</u>	100.00%
					<u>68,348</u>	100.00%

1911

1912

1913

1914

1915

1916

1917

572

SETTLING PARTIES' EXHIBIT SP-504

CENTER FOR CLAIMS RESOLUTION
 PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
 ALL DOLLAR SETTLEMENTS (EXCLUDES ZERO DOLLAR DISPOSITIONS)
 10/3/88 (INCEPTION) - 1/15/93

STATE	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
AK	2	105,200	52,600	0	0	0	0	0	0	0	0	0
AL	15	1,901,218	126,748	39	1,058,821	27,149	7	101,906	14,558	298	3,504,845	11,761
AR	11	421,560	38,324	28	646,790	23,100	2	10,500	5,250	363	3,443,202	9,485
AZ	3	233,607	77,869	3	47,934	15,978	0	0	0	34	377,157	11,093
CA	422	28,543,167	67,638	632	10,491,620	16,601	98	679,872	6,937	5,029	25,376,910	5,046
CO	9	798,260	88,696	10	190,117	19,012	1	13,817	13,817	105	854,022	8,134
CT	47	2,443,856	51,997	90	1,755,427	19,505	27	213,438	7,905	584	3,351,585	5,739
DC	6	833,956	138,993	15	1,842,986	122,866	3	1,379,000	459,667	170	2,431,683	14,304
DE	21	2,159,576	102,837	27	908,913	33,663	11	199,500	18,136	223	2,613,186	11,718
FL	162	9,775,578	60,343	232	6,835,559	29,464	61	1,034,972	16,967	2,127	18,066,796	8,494
GA	27	3,498,026	129,557	66	1,547,422	23,446	5	26,261	5,252	1,207	9,317,620	7,720
GU	0	0	0	10	22,000	2,200	0	0	0	332	730,400	2,200

10/10/10	10/10/10	10/10/10	10/10/10	10/10/10	10/10/10	10/10/10
10/10/10	10/10/10	10/10/10	10/10/10	10/10/10	10/10/10	10/10/10

CENTER FOR CLAIMS RESOLUTION
 PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
 ALL DOLLAR SETTLEMENTS (EXCLUDES ZERO DOLLAR DISPOSITIONS)
 10/3/88 (INCEPTION) - 1/15/93

STATE	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
HI	29	1,211,728	41,784	57	1,212,041	21,264	5	21,977	4,395	363	1,093,351	3,012
IA	12	512,375	42,698	27	608,475	22,536	2	10,011	5,006	1,010	1,914,322	1,895
ID	3	123,744	41,248	2	23,791	11,896	1	2,500	2,500	2	7,865	3,933
IL	87	6,900,201	79,313	290	8,648,691	29,823	81	984,327	12,152	3,739	38,799,340	10,377
IN	9	390,565	43,396	2	18,750	9,375	1	38,750	38,750	18	156,250	8,681
KS	0	0	0	1	3,650	3,650	0	0	0	20	349,155	17,458
KY	25	2,780,150	111,206	26	949,325	36,513	3	58,650	19,550	342	4,471,164	13,074
LA	81	2,126,896	26,258	147	2,021,322	13,750	34	342,420	10,017	763	5,589,954	7,326
MA	317	4,725,172	14,906	546	4,645,762	8,509	246	1,214,436	4,937	4,610	9,506,541	1,973
MD	120	13,807,799	115,065	944	41,139,045	43,579	559	11,208,253	20,051	9,520	115,857,645	12,170
ME	20	232,766	11,638	6	53,500	8,917	1	4,000	4,000	61	92,833	1,522
MI	114	9,052,443	79,407	152	6,098,628	40,123	45	716,836	15,930	1,382	15,880,294	11,491
MN	33	4,827,561	146,290	39	1,432,786	36,738	13	533,750	41,058	593	14,222,714	23,984
MO	19	1,538,269	80,962	35	1,295,550	37,016	1	11,500	11,500	197	2,054,394	10,428

7

OTHER
REMARKS
DATE
TIME
PLACE
NAME

50

CENTER FOR CLAIMS RESOLUTION
 PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
 ALL DOLLAR SETTLEMENTS (EXCLUDES ZERO DOLLAR DISPOSITIONS)
 10/3/88 (INCEPTION) - 1/15/93

STATE	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
MS	228	9,078,922	39,820	727	17,772,743	24,447	36	622,161	17,282	11,292	89,318,038	7,910
MT	4	164,605	41,151	4	7,903	1,976	1	83	83	61	99,119	1,625
NC	21	1,727,032	82,240	41	1,157,453	28,231	1	25,000	25,000	178	1,668,149	9,372
ND	3	124,640	41,547	1	23,000	23,000	0	0	0	11	104,563	9,506
NE	1	26,536	26,536	1	1,500	1,500	0	0	0	6	65,041	10,840
NH	7	267,842	38,263	8	79,908	9,988	2	8,000	4,000	75	221,041	2,947
NJ	183	12,086,179	66,045	215	7,299,746	33,952	43	858,306	19,961	2,636	31,452,160	11,932
NM	2	66,810	33,405	7	97,223	13,889	0	0	0	58	391,374	6,748
NY	298	30,381,286	101,951	451	25,390,574	56,298	94	2,132,872	22,690	2,374	38,983,510	16,421
OH	150	5,649,240	37,662	217	5,225,238	24,079	34	458,811	13,494	4,853	17,767,222	3,661
OK	9	913,167	101,463	11	232,513	21,138	0	0	0	458	555,535	1,213
OR	40	1,260,037	31,501	6	87,489	14,582	0	0	0	78	291,935	3,743
PA	357	25,498,051	71,423	988	38,734,897	39,205	255	5,254,720	20,607	11,368	112,885,956	9,930
RI	21	1,060,065	50,479	16	618,265	38,642	4	27,984	6,996	97	652,002	6,722

CENTER FOR CLAIMS RESOLUTION
 PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT
 ALL DOLLAR SETTLEMENTS (EXCLUDES ZERO DOLLAR DISPOSITIONS)
 10/3/88 (INCEPTION) - 1/15/93

STATE	1. MESOTHELIOMA			2. LUNG CANCER			3. OTHER CANCER			4. NON-MALIGNANT		
	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG	#	CCR \$	CCR AVG
SC	52	6,230,467	119,817	97	4,161,929	42,906	7	183,700	26,243	467	8,558,637	18,327
SD	2	396,081	198,041	0	0	0	0	0	0	0	0	0
TN	25	1,288,068	51,523	48	901,495	18,781	2	90,900	45,450	890	2,103,264	2,363
TX	225	31,245,079	138,867	639	16,441,318	25,730	227	3,789,862	16,695	9,665	84,918,728	8,786
UT	0	0	0	1	55,000	55,000	0	0	0	24	255,965	10,665
VA	115	10,515,401	91,438	93	3,875,883	41,676	18	462,693	25,705	1,174	15,870,581	13,518
VI	0	0	0	0	0	0	0	0	0	4	157,350	39,338
VT	0	0	0	0	0	0	0	0	0	9	11,500	1,278
WA	125	2,934,929	23,479	131	1,779,283	13,582	2	19,145	9,573	908	5,493,775	6,050
WI	18	729,252	40,514	5	58,379	11,676	1	12,500	12,500	47	439,767	9,357
WV	83	4,190,125	50,483	306	9,997,137	32,670	97	1,649,186	17,002	11,589	113,027,700	9,753
WY	3	54,738	18,246	1	3,295	3,295	0	0	0	2	3,295	1,648
ALL STATES	3,566	244,832,222	68,657	7,440	227,501,077	30,578	2,031	34,402,601	16,939	91,416	805,359,361	8,810

CENTER FOR CLAIMS RESOLUTION
ALL FILINGS BY CALENDAR YEAR
BY DISEASE
AS OF 12/31/93

DISEASE	CALENDAR YEAR			
	1992[1]		1993[2]	
	#	%	#	%
MESOTHELIOMA	734	2.47%	490	2.30%
LUNG CANCER	1,071	3.60%	841	3.95%
OTHER CANCER	360	1.21%	239	1.12%
SUBTOTAL MALIGNANT	2,165	7.28%	1,570	7.37%
NON-MALIGNANT	27,576	92.72%	19,741	92.63%
ALL DISEASES	<u>29,741</u>	<u>100.00%</u>	<u>21,311</u>	<u>100.00%</u>

NOTES: [1] 1992 filings include 6,449 West Virginia state court filings, related to a scheduled state court mass consolidated trial.

[2] 1993 filings exclude six multipointiff actions filed by the Jaques' Maritime Asbestos Clinic on behalf of a total of some 6,000 putative plaintiffs against a total of almost 100 different defendants, including several CCR Defendants; most of these actions have been refused docketing or dismissed, in some cases with prejudice, for failure to meet basic federal pleading requirements.

SETTLING PARTIES' EXHIBIT SP-509

SUMMARY OF CLASS ACTION SETTLEMENT BETWEEN THE CLASS OF CLAIMANTS AND DEFENDANTS REPRESENTED BY THE CENTER FOR CLAIMS RESOLUTION

Georgine v. Amchem Products, Inc. et al.,
C.A. No. 93-0215 (E.D. Pa.)

February 22, 1994

Class Action Settlement

* * * *

SECTION X: ALTERNATIVE COMPENSATION METHODS

- Qualifying Claimants who are not satisfied with the offers they receive will have a limited right to reject that offer and have their compensation determined in the tort system or through binding arbitration.
- The maximum number of Qualifying Claimants in each Compensable Medical Category that can resort to the tort system or binding arbitration each year will be capped at a percentage of the total number of payable Qualifying Claims: (mesothelioma - 2%; lung cancer - 2%; other cancer - 1%; non-malignant - .5%). This percentage limitation is consistent with the CCR Defendants' experience that more than 99% of the cases against them settle.
- Resort to the tort system or arbitration will be subject to a fairly common "issues trade," under which the only issues to be adjudicated will be (i) presence of asbestos-related injury, (ii) substantial contributing factor, and (iii) the amount of compensatory damages, if any.
- There is no limit on the amount of damages that may be awarded to a Claimant who proceeds

under this section. To the extent, however, that the damages award exceeds 150% of the CCR's last settlement offer, the excess will be paid over five years.

February 22, 1994

SETTLING PARTIES' EXHIBIT SP-824

International Association of Heat
and Frost Insulators & Asbestos Workers
Local No. 11 8050-B Philadelphia Road
Baltimore, Maryland 21237

December 13, 1993

Dear Sisters and Brothers:

Please find enclosed a copy of correspondence from General President William Bernard concerning a class action lawsuit filed on behalf of all persons exposed to asbestos, but have not yet filed a lawsuit against the 20 defendant companies.

You must carefully read the enclosed letter and decide whether you wish to participate in this class action suit.

To help in the decision making process, law firms who have handled prior asbestos related litigation have expressed a willingness to answer any questions you may have. I suggest you contact at least one of the firms listed below, or contact an attorney of your choosing.

Peter G. Angelos
Union Park Center
5905 Harford Road
Baltimore, Md. 21214
Phone 426-3200
James Good

Peiffer & Fabian
Suite 100
326 St. Paul Place
Baltimore, Md. 21202
Phone 576-0080
John Peiffer

Remember, time is of the essence and all decisions must be made no later than January 24, 1994.

Fraternally yours

/s/ A. KEITH WAGNER
Business Manager

AKW/pmcc
Enc.

International Association of Heat and Frost
Insulators and Asbestos Workers
Suite 301 1776 Massachusetts Ave., N.W.
Washington, D.C. 20036-1989

December 7, 1993

To all Local Union Business Managers
in the United States

Dear Sisters and Brothers:

During the last several weeks you may have received a package of material from the United States District Court in Philadelphia about a case called Carlough v. Amchem Products Inc. You may also have seen advertisements in the newspaper or on television about this case. Information about this lawsuit will also appear in the next issue of the Asbestos Workers Journal.

I am writing this letter to provide you with certain additional information that you may find helpful in responding to questions that you may receive from your members and from retirees. First, what is this case about? This case is a class action lawsuit, filed against 20 asbestos manufacturers, on behalf of *future claimants* — those who have been occupationally exposed to asbestos, but who have not yet filed a lawsuit against any of the 20 defendant companies. The suit was filed in order to obtain a court-approved settlement that would establish a mandatory procedure for resolving future claims against the 20 defendant companies. The judge in the case has made a preliminary determination that the settlement is fair and has ordered the parties to notify those who would be affected by the settlement, which is why you and your members have been receiving information and seeing notices about this case.

Second, what does the settlement agreement say? As you might imagine, the actual settlement agreement is a long and complicated document. In essence, it says that those who 1) worked with asbestos containing products manufactured by at least one of the defendant companies and who were exposed on a regular basis over an extended period of time; and 2) have contracted mesothelioma, lung cancer, certain other cancers, or certain non-cancerous conditions, such as asbestosis, can file a claim and receive compensation. The settlement also says that those who can file a

claim under the terms of the settlement agreement cannot file a lawsuit against any of the defendant companies. In other words, the procedure created by the settlement agreement is the only way for those covered by the settlement agreement to pursue claims against any of the defendant companies. You, or any of your members, can obtain a complete copy of the settlement agreement by calling 1-800-847-2727.

Third, who will be affected by the settlement? All members of "the class" will be governed by the settlement. Class members are those who have been occupationally exposed to asbestos (and those who were exposed to asbestos because a member of the household was occupationally exposed) but who had not filed a lawsuit against any of the 20 defendant companies as of January 15, 1993 and who have not asked to be excluded from the class. Note that the class includes people who have been occupationally exposed to asbestos, regardless of whether they are currently suffering from an asbestos related disease.

A person who falls within the class will be governed by the settlement agreement, unless he or she asks to be excluded from the class. Those who have been occupationally exposed to asbestos must decide in the next few weeks whether they want to be included or excluded. A person who is *included* will be able to participate in the settlement agreement, but will not be able to file a lawsuit against the defendant companies if and when he or she contracts an asbestos-related disease as a result of exposure to their products. A person who asks to be *excluded* will not be able to file a claim under the settlement agreement, but will be able to file a lawsuit against the defendants. A person who wants to be included, and participate in the settlement agreement, need not do anything. **THOSE WHO WANT TO BE EXCLUDED MUST MAIL AN EXCLUSION REQUEST TO THE FEDERAL COURT IN PHILADELPHIA POSTMARKED NO LATER THAN JANUARY 24, 1994.** The address is on the exclusion request form, which you can obtain by calling 1-800-847-2727.

Those who participate in the settlement agreement and who have, or later develop, a disabling asbestos-related medical condition would be well-advised to file a claim as soon as it is permissible to do so. The settlement agreement establishes a maximum number of claims in each medical category that can be paid each year.

Claims that qualify but are not paid in one year receive priority in the next year. So those who file first, get paid first.

Whether this settlement agreement is a fair and reasonable way of resolving future asbestos claims is a controversial issue. The AFL-CIO has endorsed the settlement, but support for it is not unanimous. This union has not taken a position either on the settlement or whether a member should or should not ask to be excluded from the class. I would advise you also to remain neutral on these issues and to allow each individual to make his or her own decision, perhaps aided by his or her lawyer or physician.

It is my belief that this matter is of the utmost importance to those of our membership who have worked with asbestos. It is not only important to those members, it is extremely important to our retired members and widows.

I strongly recommend that each local union take the steps necessary to setup a committee, possibly their Executive Board, and all full time officers to telephone and personally contact every retired member and widow of our membership to make sure that they are aware of what is involved.

I am also pointing out that time is of the essence. These decisions must be made no later than January 24, 1994.

If you or any of your members have any specific questions about the settlement that are not answered by the notice that will appear in the Journal or by any of the other material that you have received, you should direct those questions to the attorneys who represent the class, whose name, address, and telephone and fax numbers appear below:

Gene Locks, Esq.
Greitzer and Locks
1500 Walnut Street, 22nd Floor
Philadelphia, PA 19102
(215) 893-0100 Fax (215) 985-2960

Ronald Motley, Esq.
 Joseph F. Rice, Esq.
 Ness, Motley, Loadholt, Richardson
 & Poole
 151 Meeting Street, Suite 600
 P.O. Box 1137
 Charleston, SC 29402
 (800) 666-7503 Fax (803) 577-7513

With best regards and Greetings of the Seasons, I am

Sincerely and fraternally yours,

/s/ WILLIAM G. BERNARD
 General President

WGB/sjf

cc: International Vice President and Organizers

ATTENTION

If you have been exposed occupationally, or through the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products supplied or manufactured by one of the following companies (or for which these companies may otherwise bear legal liability), and you had not filed a personal injury lawsuit based on that exposure as of January 15, 1993, your rights may be affected by the settlement of a class action lawsuit pending in the United States District Court for the Eastern District of Pennsylvania. The rights of family members or legal representatives may also be affected.

Anchem Products, Inc.
 A.P. Green Industries, Inc.
 Armstrong World Industries, Inc.
 CertainTeed Corporation
 C.E. Thurston and Sons, Incorporated
 Dana Corporation
 Ferodo America, Inc.
 Flexitallic, Inc.
 GAF Corporation
 I.U. North America, Inc.

Maremont Corporation
 Asbestos Claims Management Corporation
 (formerly known as
 National Gypsum Company)
 National Services Industries, Inc.
 Nosroc Corporation
 Pfizer Inc.
 Quigley Company, Inc.
 Shook & Fletcher Insulation Co.
 T&N plc
 Union Carbide Chemicals and
 Plastics Company Inc.
 (formerly known as Union
 Carbide Corporation)
 United States Gypsum Company

Examples of the types of products which the 20 CCR defendants manufactured or supplied (or for which they may otherwise bear legal liability) and which, at various times, contained (or may have contained) asbestos, include, *but are not limited to*, the following types of products:

- acoustical products, including spray and tile
- adhesives and cements
- asbestos blankets
- asbestos cloth or textiles
- asbestos fiber or pellets (raw or processed)
- asbestos linings
- asbestos paint
- asbestos paper
- asbestos protective clothing
- asbestos rope, braided tubing and wick
- asbestos-containing sprays
- asbestos tape or thread
- asphalt products, including tile and sundries
- automotive, truck, off-highway vehicular, and marine products (brake linings, pads,

and shoes, brake blocks, clutch materials, transmission components, gasket materials, shock absorbers)

- ceiling panels, tiles, and related sundries
- cement products (cement or mortar, board, flooring, panels, pipe, flat and corrugated sheet, siding, shingles, stucco)
- ceramic or paint fillers
- commercial and industrial machines or components (brake linings, clutch facings, thermal insulation, transmission components, gaskets)

TESTIMONY OF LAWRENCE FITZPATRICK

* * * *

[Tr. 63] DIRECT EXAMINATION

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, would you state for the record again your name and your current place of employment?

A. Lawrence Fitzpatrick. Center for Claims Resolution.

Q. What is your title and what are the duties of that title?

A. President and chief executive officer. My duties include ultimate responsibility for all CCR matters and all CCR departments.

Q. How long have you been with the CCR?

A. Since it was formed in October of 1988.

Q. What was your previous employment?

A. From February of 1986 until October of 1988, I was employed by the Asbestos Claims Facility. My title at the Asbestos Claims Facility was vice president of law.

Q. And prior to that?

A. From 1980 through 1986, I was employed by a company called Owens Illinois located in Toledo, Ohio. My official [Tr. 64] job title was legal counsel. While at Owens Illinois, I performed a variety of asbestos-related defense tasks including personal injury work, asbestos property damage claims and asbestos insurance coverage litigation.

Q. Mr. Fitzpatrick, I'm going to ask you a series of questions going back to the days of the Asbestos Claims Facility when you were there. When was the Asbestos Claims Facility created?

A. It was basically created by the signing of the so-called Wellington Agreement named after Dean Harry Wellington on June 19th, 1985.

Q. Very briefly, how was it formed and what was its purpose?

A. I'll be as brief as I can. Prior to 1985, there were literally dozens and dozens of insurance coverage actions involving asbestos pending all over the United States of America involving the issues

of who would be responsible for insurance coverage for asbestos claims.

The Wellington Agreement resolved all those insurance disputes between the signatories to the agreement, both producers and insurers and set up a facility to handle the asbestos personal injury claims against those who signed the Wellington Agreement.

Dean Wellington acted as a facilitator during the period of time that the Wellington Agreement was negotiated.

Q. What was its claims-handling function?

[Tr. 65] A. Its function was to handle the asbestos personal injury claims against the approximately 35 producers who had signed the Wellington Agreement.

Q. Mr. Fitzpatrick, would you look at Exhibit 100. Do we have the book? Bear with us.

(Pause in proceedings.)

THE COURT: Mr. Aldock, if you're going to have — simply feeding information to the witness, you ought to do it all at one time, if you could, please, instead of having to walk books back and forth. Are you going to use this book for —

MR. ALDOCK: Well, I think, your Honor —

THE COURT: — quite a while.

MR. ALDOCK: — that everything is going to be in that book except for one exhibit.

THE COURT: Fine. Okay.

(Pause in proceedings.)

MR. ALDOCK: Mr. Baron has the documents we're going to use.

MR. BARON: Okay.

(Pause in proceedings.)

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, would you look at Exhibit 100 and tell us what that is?

A. Right. Exhibit 100 is entitled, The Agreement Concerning [Tr. 66] Asbestos-Related Claims. It's dated June 19th, 1985.

And it is the so-called Wellington Agreement which shows how all the pending insurance coverage disputes were resolved through the negotiation process and outlines what the Asbestos Claims Facility should look like and how we should handle claims.

Q. And was that the operable document throughout its history?

A. It was.

Q. Would you look at 102, please?

A. Yes, sir.

Q. What's that?

A. It's a document entitled, Producer Agreement Concerning Center for Claims Resolution. It's dated September 28, 1988. And I guess I must explain that the Asbestos Claims Facility operated until September or October of 1988 and was dissolved by the membership at that point in time.

At the same time, we formed the Center for Claims Resolution in October of 1988. So this is the basic charter document or constitution, if you will, of the Center for Claims Resolution.

Q. Let me back up. I put that up out of order, Mr. Fitzpatrick. I apologize.

Look at 101.

A. Yes, sir.

(Pause in proceedings.)

[Tr. 67] A. I have 101.

Q. What's that?

A. Exhibit 101 is a list of the ACF members, the producer members who belong to the facility and also a list of the insurance companies that signed the Wellington Agreement and were members of the facility.

Q. With respect to those ACF members listed there, Mr. Fitzpatrick, are there companies that are no longer in business or in Chapter 11?

A. Yes, sir.

Q. Could you tell us which ones are?

A. Yes. Let me go down the list then. Carey Canada is no longer in business. It is in bankruptcy.

Celotex is no longer in business. It is in bankruptcy.

Eagle Pitcher is in bankruptcy.

H. K. Porter is in bankruptcy.

Keen is in bankruptcy.

National Gypsum has gone through bankruptcy proceedings but emerged and is represented by the Center.

(Pause in proceedings.)

A. I believe that concludes the list.

Q. Mr. Fitzpatrick, when did the Asbestos Claims Facility breakup?

THE COURT: He already said September of '88, I [Tr. 68] thought.

THE WITNESS: That's correct.

BY MR. ALDOCK:

Q. Could you give us the reasons why?

A. I think there were several reasons. Some of the producer members simply began to feel that they no longer had the resources to fund their share of the settlements. They saw their insurance coverage and other assets dwindling. There was also a philosophical split among the membership on asbestos claims-handling philosophy. Some of the members favored what I viewed as a liberal claims-handling philosophy. Others were much more restrictive and basically wanted to try many many cases.

There were also governance problems with the facility. It had been set up as a one-company, one-vote sort of an operation and so in the opinion of some of the larger members, the smaller members, because of that governance structure, were able to outvote them on governance questions.

And then, finally, there was a perception on behalf of at least some of the larger facility members that the facility's sharing formula, the formula whereby semblance and defense costs were whacked up among the membership was not flexible enough to

account for the changing occupational mix of asbestos claims that occurred in the 1985-1986 era.

Q. What was the relationship between the Asbestos Claims [Tr. 69] Facility and its demise and the creation of the Center for Claims Resolution?

A. Well, the Center for Claims Resolution is not legally a successor to the Asbestos Claims Facility but all of the Center members previously had belonged to the Asbestos Claims Facility and all of the Center's supporting insurers had previously been signatories to the Wellington Agreement and supporters of the facility.

Q. Approximately how many companies that were not in bankruptcy otherwise decided not to go forward with the Center for Claims Resolution and went separately into the tort system?

A. I haven't counted them. I would think somewhere between eight and 12. I'm not positive.

Q. Mr. Fitzpatrick, would you look at Exhibit 104?

A. Yes, sir.

Q. Is that a list of the members of the Center for Claims Resolution today with the exception of the United States Gypsum, which has changed its name and nomenclature for purposes of coming out of the bankruptcy?

A. Strictly for record purposes, it's not United States Gypsum that has changed its name. It is National Gypsum that went through bankruptcy —

Q. I'm sorry. I misspoke.

A. — and has changed its name to Asbestos Claims Management [Tr. 70] Corporation. With that minor correction, this is a list of the Center members.

Q. And that's because it's the trust that survived and the trust is the litigant in the tort system today?

A. Absolutely.

Q. You've identified 102 as the producer agreement for the CCR. What is 103?

A. Yeah. 103 — Exhibit 103 is nothing more than Exhibit 102 incorporating some amendments we made to the basic agreement in the first couple of years so Exhibit 103 is the Center's charter or constitution as amended through December 1st, 1991.

Q. And there have been no amendments of significance since?

A. That's correct.

Q. Would you look at 105. What's that?

A. Exhibit 105 is a list of the supporting insurers of the Center for Claims Resolution.

Q. What's a supporting insurer?

A. A supporting insurer is an insurance company that pays — rather gives coverage to the members in accordance with the terms of the Wellington Agreement and the dispute resolution items contained therein and a supporting insurer also contributes financially to the operational costs of running the Center. So they pay bills and they also help fund us.

Q. There's also on that page something called paying non-[Tr. 71] signatories. What's that?

A. Those are insurance companies that pay bills and give coverage in accordance with the Wellington Agreement terms but they don't necessarily contribute — help to defray the operating expenses of the CCR.

Q. What are the functions that the CCR performs for its members today?

A. Well, we basically are responsible for handling all asbestos personal injury claims against the 20 member companies who belong to the Center.

Q. How is it structured as a corporate and governance matter?

A. Yeah. Well, we have basically three operational branches. We have a claims department, a legal department and an administrative department. Well, we basically have a fourth branch which is a consultant called Peterson Consulting which does a lot of the share work and the billing work for us.

Our operational department, administrative department report to a Mr. Mike Rooney who's our chief operational officer. Mr.

Rooney reports to me and I in turn report to the board of directors that governs the Center.

Q. Would you look at Exhibit 106, please?

A. Yes, sir.

Q. It's entitled Benefits at the Center for Claims [Tr. 72] Resolution. What was that prepared for and what is it?

A. All right. The reason it was prepared is because we are quite frequently audited by insurance companies and reinsurers that want to make sure that we're handling asbestos claims in an efficient manner so that everything's proper under their insurance policies and coverage attaches. So it was prepared primarily to deal with insurance companies and reinsurers who frequently come in to audit us.

It basically just shows some of the benefits belonging to the Center for Claims Resolution.

Q. Mr. Fitzpatrick, I want to shift now to the period 1987 to 1992 in the tort system.

A. Yes, sir.

Q. When was the first time that you heard any consistent or frequent talk of the need for a global settlement to the asbestos crisis?

A. I think that as early as the year 1986, there began to be a widespread recognition that the asbestos litigation was spinning out of control and that a better solution needed to be derived.

Q. What were the factors that were brought to your attention or that you were aware of at that time that are subsumed in the phrase, "spinning out of control"?

A. Right. Prior to 1985 or so, new lawsuits had been filed at a relatively constant rate of about 500 per month or 6,000 [Tr. 73] per year and that had been true of not only '85, but 1984, '83, '82 and '81. I believe the backlog of asbestos cases had been in the 20,000 to 30,000 case range throughout that period with, you know, variations here or there, but that had roughly been the size of the problem.

Commencing in about 1986, the rate of new filings of asbestos claims accelerated dramatically so that instead of 500 claims a

month being filed, approximately 2,000 claims a month started being filed and that held true throughout 1986, 1987, 1988, 1989, 1990 and indeed it holds true today. So by 1986, at least, there was a growing awareness that the backlog was growing and that the new filings were way up.

There had been studies done in the early '80s about transactional costs, how much went to lawyers in the asbestos litigation and there was a growing realization that the majority of the dollars being spent on asbestos were not in fact going anywhere near the victims but were instead going to the lawyers.

There were legions of examples of erratic verdicts in the tort system. Mesothelioma victims getting nothing. People with no impairment getting six and sometimes seven-figure verdicts.

So for a lot of reasons beginning in the mid-'80 period. Academics, think tanks, Congress and I think judges began to realize that the asbestos problem was something that [Tr. 74] was spinning out of control, to use my phraseology.

Q. Were there bankruptcies during this period of the '80s?

A. Sure. The original major bankruptcy occurred on August 26th, 1982 when the then called Johns-Manville Corporation filed for bankruptcy. Manville was frequently termed the General Motors of the asbestos industry, had supplied huge [sic] amount of the products and indeed had basically controlled the asbestos litigation until such time as it went bankrupt.

MR. BARON: Your Honor, I'm going to have to insert an objection on relevancy. We're judging this settlement. We're not judging what the history of asbestos has been.

MR. ALDOCK: If I might —

THE COURT: The objection's overruled.

THE WITNESS: Other bankruptcies in this early '80 period included a company called Unarco (ph), which was a fairly substantial defendant prior to the time that it went into bankruptcy.

There have been others but in the early to mid-'80s, I think Unarco and Manville are the ones that stick in my mind.

Q. Was the phenomena of what we call screening something that accelerated during this period?

A. Yes. And I probably should explain what screenings mean.

Q. Please.

A. Let me start out by saying screenings per se are not [Tr. 75] necessarily good or bad in my view. Screenings are examinations of large numbers of workers from a given industry, in my context, to see if they have asbestos-related health problems. Involves, you know, many times a van or something like that. Workers are X-rayed and given tests by the hundreds per day to see if they have asbestos-related health problems.

If they're done properly, for the proper reasons by reputable doctors, I think they can be a good thing but what we saw happening in 1985, 1986 was in an attempt to get additional new claims. Some plaintiffs' attorneys were reaching out to occupations that were only secondarily exposed to asbestos, were screening these workers by the thousands, were using doctors that have subsequently been found to be of very questionable qualification and were filing hundreds and thousands of lawsuits as a result of these kinds of mass screening which I do not consider to be a good thing.

A prime example of this whole problem is what happened in the tire worker litigation and without getting into great detail, you know, what happened in the tire worker litigation was subsequently ruled to be a fraud on the Court by Judge Kelly out in Kansas and he looked at it and saw that thousands of workers had been screened. Something like 30 to 40 percent had been told they had asbestosis. NIOSH, the [Tr. 76] National Institute of Occupational Safety and Health had become alarmed by these reports, had done its own study and found virtually no asbestos-related diseases in these tire workers and ultimately it just became a complete fiasco and farce.

Q. Was in your opinion your perception of the situation as you found yourself in the '80s and these events you've described in the '80s shared by your colleagues at other companies and plaintiffs' lawyers and defense lawyers and others that you met with at the time?

A. I think it was shared by my colleagues and other companies and my colleagues in the insurance industry. It was shared by some but not all of the members of the plaintiffs' Bar that I dealt

with. Those who had been the founding fathers, if you will, of the asbestos litigation who had engaged in this business and done the initial discovery back in the — basically '60s and '70s. Many of those people who I talked to were abhorred by what happened in the mid to late '80s in terms of these mass screenings and meritless cases.

Other plaintiffs' attorneys who were newer to the business, I don't think were quite as abhorred, if you will, by what happened.

Q. Mr. Fitzpatrick, when was the first time in this period that we're talking about in the late '80s that you actually [Tr. 77] went to a meeting with the judiciary to discuss the asbestos crisis and the need for a global solution?

A. July 7, 1987.

Q. What meeting was that?

A. It was the first meeting on asbestos sponsored by the Federal Judicial Center. This particular meeting was held at the Sixth Circuit Court of Appeals courthouse in Cincinnati, Ohio. It involved judges from all over the country with significant asbestos dockets.

I was asked to come to this meeting and talk to the judges as were plaintiffs' attorneys, Mr. Levy from New York, Stan Levy and Mr. Robert Sweeney from Ohio. There may have been other plaintiffs' attorneys at this meeting, but those are the two I recall.

Q. What was the tenor of the discussion at that conference that you attended?

A. I think among the judges present, there were a lot of things discussed. The growing backlog was a concern of theirs. The fact that settlements were not keeping pace with new filings. The fact that transactional costs were — continued to eat up an enormous amount of the claims dollar, and the bankruptcies that had taken place were also a topic of discussion.

Q. Did you have a perception that the problems you described in your testimony earlier, were problems that others were [Tr. 78] experiencing in the same terms?

A. Oh, absolutely.

Q. As a follow-up to that meeting in Cincinnati, did you have occasion to discuss any of these concerns with anybody on the plaintiffs [sic] part?

A. Certainly. Immediately after attending this conference at the Sixth Circuit, I telephonically contacted Mr. Ron Motley. Mr. Motley having the largest number of asbestos cases in the country, his cases and all of his affiliates are counted, and having also had a leadership role in various national matters pertaining to asbestos on behalf of the victims, particularly the Manville trust bankruptcy at that point in time, was the logical person for me to approach.

Q. And share with us generally the tenor of those discussions?

A. Well, I think we discussed over the telephone several times the problems with the asbestos litigation as we perceived them, the comments the judges were making about the asbestos litigation.

What were potential ways to fix what looked to be a broken system, and I think we finally got to the point in August or September of 1987 where we actually began to exchange documents about a global solution to asbestos.

Q. From late '87 through '89, were you and the people you reported to really in a position to pursue these discussions [Tr. 79] with any frequency?

A. No, sir.

Q. Why is that?

A. Well, as I indicated earlier today, the facility began to fall apart for lack of a better word in late 1987, and that process continued throughout 1988. And my energies during this period of time were solely directed at seeing the facility dissolved in a way that was not unfortunate for all concerned.

And I was able to do that, but during that period of time, it was more of a focus on dissolving the facility effectively than talking global settlement or things of that nature. Indeed as the facility was falling apart, I could not have delivered any kind of a global settlement because the membership was uncertain.

Q. In the years, from the time the Asbestos Claims Facility had its demise through say the middle of 1990, did we in the tort

system experience what came to be called a matrix defendant defense, or anything like that?

A. Actually I think that matrix defendant approach, and I probably should explain what that is, it's a given company and often it's a company that perceives itself to be in financial difficulty or is in financial difficulty with [sic] adopt an approach of offering a certain set dollar figure per asbestos disease category, with no regard whatsoever to the [Tr. 80] facts of the individual case.

The fixed fees that are offered are non-negotiable, and are usually a fraction of what the company previously paid in the tort system. Those offers are made to plaintiffs attorneys and victims on a take it or leave it basis. You either take the fraction that's offered you, or you proceed to trial against that company.

The first matrix defendant probably dates from the mid-1980s when Raymark adopted such an approach, tried it for a period of time. I tried cases all over the country, it had adverse verdicts rendered against it all over the country, and ultimately went bankrupt.

During the period you asked about, the Celotex Corporation which had been a member of the facility but chose not to join the center, but wanted to go on its own, it adopted a matrix approach very similar to the approach that Raymark had adopted, although the dollars were slightly different, but not significantly.

And again, the same experience repeated itself throughout the 1988 and 1989 with Celotex. They tried cases all over the country, huge adverse verdicts, although they won some, but usually adverse verdicts were rendered against them in numerous jurisdictions, and finally Celotex also ended up filing for bankruptcy as a result of its experiences.

[Tr. 81] Q. When a defendant becomes a matrix defendant, what is the effect on a tort system itself as opposed to that company and its risk?

A. Well, they disturbed the system to the extent it's a relatively smoothly running system in a jurisdiction, that a judge has been able to manage relatively well.

When a defendant goes to a matrix system, offers a plaintiff's attorney on a take it or leave it basis, five or ten percent of what

it used to offer, that results in repeated litigation and trials in that jurisdiction which stops up, if you will, the efficient processing of claims in the jurisdiction. And when you magnify on a national scale, then it becomes a significant problem for everybody.

Q. Did the Federal Judicial Center become involved again in the asbestos problem in roughly June of 1990?

A. Yes, they did.

Q. Would you turn to Exhibit 203, please?

A. Yes. I need to change books.

Q. Sure.

(Pause in proceedings.)

THE COURT: Mr. Aldock, while we have a momentary pause here, and all counsel should follow my instruction, if you're going to offer exhibits, they should be offered while the witness is on the stand, at some time while the witness is on the stand, rather than after the witness has left the [Tr. 82] courtroom and we have a problem putting things back together.

MR. ALDOCK: It had been my intention, your Honor, if it meets with your Honor's pleasure, to move all the exhibits identified by Mr. Fitzpatrick at the close of his testimony.

THE COURT: Fine. I don't know whether we had discussed that, I don't remember, but it's just a reminder.

BY MR. ALDOCK:

Q. Have you had a chance to look at Exhibit 203?

A. Yes, sir.

Q. What's that?

A. That is a June 20, 1990 letter from the Federal Judicial Center, signed by James Apple who was the director of the Federal Judicial Center, inviting certain individuals to an asbestos conference sponsored by the Federal Judicial Center in June of 1990.

Q. Roughly what was the size and complexion of the group that attended this conference?

A. I'm not sure of the size. It included several prominent plaintiffs lawyers, several academics, knowledgeable in this field,

several defense representatives, and finally several of the major federal judges with asbestos caseloads, and I believe at least one, if not two, state judges with an asbestos caseload.

Q. Did you and I attend that meeting?

[Tr. 83] A. We sure did.

Q. Well, what concerns were addressed there? What was discussed during that day session?

A. Well, it was largely a discussion of the same concerns that had been discussed at the 1987 conference, but they had magnified in severity in the three years that had past.

The transactional costs were still a major problem, the new filings rate had continued unabated, the unimpaired claimant problem had become even more severe because of the screenings. Backlogs had grown, the problem, you know, was approaching I believe 70 to 80,000 cases by the time of this 1990 conference, perhaps more.

Various contingent to be inconsistent, there continued to be what the judges felt were unnecessary repetitive trials of issues, unnecessary trials. So there was a whole plethora of issues discussed at this conference.

Q. Did some of the judges in the open sessions before there was a break-up between plaintiffs, defendants and judges, actually put out for discussions vehicles for addressing this problem?

A. There were a lot of things thrown out at this conference. Class actions were discussed, a national asbestos trial day was discussed, pleural registries, which I guess I haven't defined but will, were discussed, and I think there were a host of things that were discussed by the judges.

[Tr. 84] Q. Was there discussions of the judiciary's view of what the Bar should be doing about all this?

A. Yes. I mean, they basically told the plaintiffs attorneys present and the defendants present that they had better get together and solve this problem, that the problem was out of control, and that they expected a solution.

Q. What conclusion did you reach as you left that conference?

A. I viewed it as an enormously significant event in the history of the asbestos litigation. I don't think anybody who participated in that conference could have gone away from it feeling that business as usual was going to be acceptable in the minds of the judges. And that something creative had to happen and that was my impression walking away from that conference.

Q. What, if anything, did the CCR resolve to do to follow-up on that conference?

A. We decided to follow what basically we had been told to do, and that is to together with the plaintiffs bar and see if we could come up with a solution.

Q. What, if anything, did the asbestos judges begin to do following that conference, particularly some of the federal judges?

A. Right. They did a couple of things. For the first time the asbestos judges decided to organize themselves in a [Tr. 85] group, and they formed what became known as the ad hoc committee of asbestos judges.

I believe among the judges who belonged to that group were Judge Parker from Texas, Judge Lambrose (ph) from Ohio, Judge Weinstein from New York, Judge Cifton (ph) from New York, Judge Zobel (ph) from Massachusetts, Judge Jex (ph) from Mississippi, Judge Weiner from Pennsylvania, Judge Williams from California, and Judge Wally (ph) from Iowa. Those are the ones I remember as being members of that ad hoc committee.

Q. Was there any judicial action in the form of orders that began to issue shortly after that conference?

A. There were, they were odd orders. Judge Lambrose himself first started issuing a series of orders, and then finally a major order was issued, I believe it was titled national asbestos order, or words to that effect.

That particular order basically attempted to combine the Ohio asbestos litigation and a class action that had been filed down in Texas, along with some Eagle Picture limited fund proceedings that had been filed in New York. So it was a bit of a convoluted order, but it clearly showed these asbestos judges were stretching for a solution.

That particular order lasted about ten days. A minor defendant took it up on mandamus to the Sixth Circuit, and to no surprise, the Sixth Circuit found that ad hoc [Tr. 86] committees don't have power to issue Article 3 orders. But it was an indication of how serious the judges felt at that point in time, and how far they were willing to go to find a solution.

Q. Who were the primary judges on those two orders that we in the field call the Dolly Madison orders?

A. Judge Parker from the Eastern District of Texas, and Judge Lambrose from the Northern District of Ohio.

Q. Did the plaintiff bar as a result of the June conference, begin to take action in court that was different than what they had done before?

A. Sure. They took a major action. On July 17th, I believe it was, 1990, they filed a case called Linscomb — I'm sorry, my voice — Linscomb, et al [sic] versus virtually all of the major asbestos defendants and many of the minor defendants.

That action purported to be a Rule 23(b)(1)(b) limited fund litigation class, filed in whatever the federal court is for Beaumont, Texas.

Q. The Eastern District?

A. The Eastern District of Texas.

Q. Who filed it?

A. As I recall, four attorneys filed it. Mr. Motley, Mr. Walter Umphrey (ph) who is an asbestos attorney down in Eastern Texas, Mr. Tom Henderson from Pittsburgh who is in court here today, and finally a gentleman named Herb Newburg, [Tr. 87] who I believe is from Philadelphia, and has some expertise or renown in class action matters.

Q. So the late Mr. Newburg of Newburg on class actions?

A. Yes, sir. Now, those are the four I remember. There may have been others, that's all I can recall.

Q. What was your impression as we proceeded to deal with that matter, that was the lead counsel in that case?

A. No question it was Ron Motley.

Q. Did they sue a dozen people, 25 people, 50 people, 100 people, what was the order of magnitude down there?

A. There was more than 50, and I believe it was more than a hundred. It was a lot of defendants that were sued in that case.

Q. What was the defendants reaction to that filing?

A. Virtually every defendant was opposed to a litigation class in Beaumont, not just of course those who were members of the CCR, but virtually all of the companies that were named as a defendant, and virtually all of them basically refused to even bargain with the plaintiffs bar with that, perceived to be sort of damocles, hanging over their head.

Q. Did the defendants organize themselves and meet in large groups during this period?

A. Sure. When we had been told to organize ourselves by the judges, we formed a steering committee of basically what I perceived to be the then solvent major asbestos defendants. [Tr. 88] We, the steering committee, then made it an effort to reach out to smaller defendants, or so-called peripheral defendants. So ultimately, we put together a group of some 60 to 75 defendant companies that we were speaking on behalf of.

Q. Were there any other significant meetings with large numbers of plaintiffs and defendants counsel that occurred during this mid-1990 period?

A. Sure. This is when we first began to discuss global settlement in earnest with the asbestos plaintiffs bar, or at least with a large group of the asbestos plaintiffs bar.

Q. Was there a meeting on July 25 in St. Louis?

A. Right. The first meeting of the steering committee, defense steering committee with the plaintiffs steering committee, took place July 25th, 1990 in St. Louis.

Q. Why was it in St. Louis?

A. It was in St. Louis because Ron Motley was on trial across the river in East St. Louis, and we just didn't perceive we could have a meaningful meeting without Mr. Motley's presence.

Q. How many people came?

A. I think 15 to 20, I'm not sure.

Q. Division between plaintiffs firms and defense representatives?

A. Right, about half and half.

[Tr. 89] Q. What happened at the meeting?

A. Well, I think the initial meeting between the defendants and the plaintiffs was a positive one. That we came away from it with the sense that people were willing to work together, to see if a global solution could be found. We didn't obviously resolve any issues at this first meeting.

Q. What was your feeling as you left the meeting? Was it going to be the first of many, or what were you going to do as a result?

A. It was certainly going to be the first of many. And in fact, we met with the plaintiffs attorney on the average of twice a month thereafter throughout 1990 in various locations all over the country.

Q. During this period, did we have the complication of yet another asbestos-related class action?

A. Yes. A company called Eagle Picture located in Cincinnati, Ohio in 1990 attempted to file a limited fund class action in New York before Judge Weinstein. Eagle Picture perceived itself to be running out of money, and filed a 23(b)(1)(b) class action before Judge Weinstein in New York.

Q. What happened there?

A. Well, to simplify it, I mean ultimately Judge Weinstein appointed an attorney to represent the future victims named Stan Chesley from Ohio, who I think it's fair to say is a man [Tr. 90] with some renown as a plaintiffs attorney, but has really no expertise in asbestos litigation.

That caused the asbestos plaintiffs bar to unite in vehement opposition to what Judge Weinstein was trying to do with Eagle Picture, and ultimately Eagle Picture just ended up filing for bankruptcy because the opposition from the plaintiffs bar just kept delaying things in the class action until they finally just couldn't pay their bills anymore.

Q. Mr. Chesley was nominated or appointed by Judge Weinstein as the representative of claimants, isn't that right?

A. Yes.

Q. Yes. What was the objection to Mr. Chesley that the asbestos bar mounted?

A. The asbestos plaintiffs bar?

Q. Yes.

A. I think in shorthand terms, that the man had never handled an asbestos case, and for that reason, for want of a better term, didn't know what he was doing.

Q. Would you look at Exhibit 205, please?

(Pause in proceedings.)

A. Yes, sir.

Q. And I want to particularly — I'll ask you what it is and then I want to address you to Page 14 of that exhibit.

What is that document?

A. It is a response to the firm of Baron and Budd to Judge [Tr. 91] Weinstein's order appointing Mr. Chesley (ph) as counsel and it was filed in the Eagle Pitcher proceeding.

Q. Would you turn to Page 14? The first full paragraph and the paragraph below it on that page. That's all I'm going to ask you with respect to this document.

A. Okay. Yes, I have those.

Q. What is the — what is the gist of this paragraph second and the language before it? What's the argument?

MR. BARON: Your Honor, I — sorry. Go ahead. Are you finished, John?

THE COURT: First of all, I'm trying to find the page.

MR. ALDOCK: Page 14, your Honor, of 205.

THE COURT: I have it. I thought you said Paragraph and then I noticed there weren't any.

MR. ALDOCK: Paragraph second and the other language I'm interested in ends on that page.

THE COURT: Mr. Baron?

MR. BARON: Yes, your Honor. The document speaks for itself. There was a legal pleading filed in a case and it's very lengthy legal pleading and they're taking one sentence totally out of context.

And there's no — there's no showing that this witness has any specialized knowledge in that case or has the ability to review what the plaintiffs' Bar and particularly [Tr. 92] Baron and Budd had in mind with this motion. The motion deals with numerous issues and they're just reading one sentence out of context.

MR. ALDOCK: We may be doing that, your Honor, but I'm going to move the whole thing in of course.

THE COURT: The document will be in evidence and you can cross-examine on it, Mr. Baron.

MR. BARON: Thank you.

THE COURT: Overruled.

MR. BARON: Thank you.

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, what's the gist of that second paragraph and the line below it? What's the argument?

MR. BARON: Your Honor, on that one, I've got a separate objection. I don't think he can give me the gist of an argument. If he wants to read the document, that's another matter.

THE COURT: I really don't need the witness to tell me what this says. I can read it.

MR. ALDOCK: Sure.

BY MR. ALDOCK:

Q. Were those objections to Mr. Chesley unique to Baron and Budd?

A. No.

Q. Indeed, was there any support by anybody that you [Tr. 93] remember at the time in the plaintiffs' Bar for the proposition that a lawyer who was not a major asbestos lawyer could represent the class?

A. I'm not aware of any plaintiff's lawyer that appointed — that supported the appointment of Mr. Chesley as counsel in Eagle Pitcher.

Q. How would you rank that episode of the appointment of counsel among the reasons that that proceeding didn't go any further than it did?

MR. BARON: Your Honor, I object in that he has no specialized knowledge and that that proceeding went up on a writ of mandamus to the Second Circuit and then subsequently was terminated by a voluntary bankruptcy. I don't believe he's been shown to have any specialized knowledge.

THE COURT: There's a different reason, Mr. Baron. The objection's sustained. He's already commented on the effect in his testimony. This witness has already said what he thought the effect was. I understood him to say so.

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, in September of '90, was there another couple of events, September and November of 1990, that resulted from the judiciary, that bore on the state of the litigation at that point in time?

A. September and November of 1990?

Q. September 27 —

[Tr. 94] A. Yes.

Q. — 1990, what happened then?

A. Right. In September of 1990, Chief Justice Rehnquist appointed a panel to study the asbestos personal injury litigation. That panel's report came out in May of 1991. So that's what occurred in September of 1990.

In November of 1990, several asbestos federal judges with significant asbestos dockets wrote to the Judicial Panel for multi-district litigation and requested a transfer of the cases under the MDL panel rules.

Q. Would you look at Exhibit 206, Mr. Fitzpatrick, and is that the letter of the judges you've just described?

(Pause in proceedings.)

A. Yes. 206, Exhibit 206 is the letter to the Judicial Panel from the judges requesting that the panel take action.

Q. After those two events, the appointing, not the conclusion of the Rehnquist Committee, and the judges' letter in November to the multi-district panel with regard to asbestos, what happened to the global settlement efforts between plaintiffs and defendants?

A. Well, I think at this time, which is the fall of 1990, the global settlement discussions which had been taking place which had been intense actually intensified even more because of these — some of these actions and heated up even more than they had been and they had not been in active [Tr. 95] negotiations.

Q. Why did it have that effect?

A. Well, I think we all felt pressure caused by the uncertainty of what Rehnquist was going to do, the Rehnquist Committee was going to do.

Q. And the MDL?

A. MDL, I honestly never saw this letter until after the Judicial Panel order in 1991. It was not a public letter.

Q. Would you turn to 207? Exhibit 207?

A. Right.

Q. What's that?

A. That is basically the January, 1991 order to show cause by the MDL panel asking for entities to show cause why all asbestos federal cases should not be transferred to a single forum.

Q. And was it — was it that time, am I right, that the letter that you previously identified then appeared in the record of those proceedings and that's when you saw it?

A. Yeah. I didn't see it until after the order to show cause was issued.

Q. What was the position of the plaintiffs' Bar on the show cause?

A. I think the vast majority of the plaintiffs' Bar supported MDL transfer of the federal cases and supported the transfer to the Eastern District of Texas.

[Tr. 96] Q. For what purpose?

A. Well, the Linscomb class action had already been filed and they wanted the Linscomb class action.

Q. What was the position of the defendants, recognizing that the defendants were not all common in this position? What were the two groups? Defendants and their positions?

A. There were two groups. I mean of the major defendants, I think Owens Illinois and I believe Pittsburgh Corning along with several peripherals defendants opposed MDL transfer.

The Center defendants along with Owens Corning Fiberglass and Fiberboard were in favor of MDL transfer at least for pretrial purposes.

Q. And the papers filed by those people, what were the purposes they were seeking out of the MDL?

A. Well, those defendants who favored the transfer under the MDL, I think did so for a number of reasons. They hoped the transfer would help to foster the global settlement discussions which had been going on for some time by that point.

They also hoped the panel would be able to deal with contingency fees, unimpaired claims, transactional costs, could coordinate with the bankruptcies and there are a whole host of reasons given for support of the transfer.

Q. Was there any common ground as this MDL argument came to be presented to the Court between the plaintiffs and [Tr. 97] defendants, indeed all the plaintiffs and the defendants on the contingency that if there was a transfer what would happen?

A. Yes. I mean the — the plaintiffs obviously favored the Eastern District of Texas which is viewed as a very pro-plaintiff forum. The defendants favored a transfer to somewhere in New England which is viewed as more a fairer jurisdiction by the defendants.

(Laughter.)

A. And I think we all agreed that if a transfer couldn't go to Texas which satisfied the plaintiffs and New England which satisfied the defendants, that the Eastern District of Pennsylvania would be a neutral — neutral as you can be — forum.

Q. After the transfer — well, look at 209. Let's just make sure we get that done. What's Exhibit 209?

A. Yes, sir. I have 209.

Q. What is it?

(Pause in proceedings.)

THE COURT: The copy of 771 Fed. Supp. Section.

Isn't it Page 415.

MR. ALDOCK: What —

THE COURT: The consolidating MDL opinion.

MR. ALDOCK: And that's July of '91.

BY MR. ALDOCK:

[Tr. 98] Q. At that point in time, when that order came down, what then happened with the global settlement discussions?

A. Yeah. I need to back up. The large group of global settlement discussions which had heated up significantly in late 1990, had more or less — I don't want to use the word "gone dormant," but they had slowed down significantly in early 1991 I think primarily because of the panel's order to show cause.

Nobody knew what was going to happen as a result of the order and the plaintiffs were waiting to see if it was going to go to Texas and we were waiting to see if it was going to go to a fairer jurisdiction and because of that uncertainty, I really think people weren't willing to commit and make further compromises in those negotiations so they had gone, if not dormant, had slowed down after the MDL's order transferring the cases to Judge Weiner in July of 1991 those global settlement discussions then once again heated up.

Q. Look at — Mr. Fitzpatrick, you're going to have to look at a different book and I apologize for how this was — we've done this, but Exhibit SP-1020 which is Pretrial Order Number 1 in the MDL and I really only want to ask you about —

A. I'm sorry, I missed the reference. Is it — what's the exhibit number?

Q. 1020. The Ness, Motley Exhibits.

[Tr. 99] A. Oh, okay.

Q. I also apologize for everyone. This is not the complete document. I only want to ask about one page. we will substitute the complete document in the record.

(Pause in proceedings.)

A. Yes, I have that in front of me.

Q. Page 7 of this order. What is — this is an order of Judge Weiner dated 9-17-91?

A. Yes, sir.

Q. Look at Page 7.

(Pause in proceedings.)

A. Yes, sir.

Q. Who was appointed by the Court as the co-lead counsel for the plaintiffs?

A. Oh, Judge Weiner appointed two co-lead counsel. He appointed Mr. Motley and Mr. Gene Locks as co-lead counsel of the plaintiffs, steering committee in connection with the MDL cases.

Q. Did Mr. Henderson have a role in this steering committee?

A. Yes, sir, he did.

Q. And just because he's a name who will appear again, did Mr. Hatton have a role on this list of people?

A. Yes, absolutely.

Q. On Page 9, I'll only ask one more question. When the defendants organized themselves, was the Center represented [Tr. 100] in the steering committee, in the negotiating committee?

A. Yes, sir.

Q. When we began to organize in this Court as plaintiffs and defendants with Judge Weiner and when he opened the proceedings early on, what was the message that you took away from those large plaintiff-defendant sessions?

A. Well, after the cases were transferred to Judge Weiner, I got the very clear message that he wanted us to solve the problem and to come to a global solution. He made it very clear about solving the problem. He didn't mean just the present cases, he wanted the

problem solved which included both the present and the future cases. I don't think anybody could have drawn a contrary conclusion from the messages he gave us.

Q. As a result, did the plaintiffs and the defendants begin to get together again on an active basis?

A. Yes.

Q. And what were the discussions — what were the major issues that were being discussed at that point in time?

A. Yeah. I think the major sticking points in the discussions at that point in time involved the present pleural cases.

Q. And what was the fight over regarding the present pleural cases?

A. The plaintiffs Bar was opposed to any global settlement [Tr. 101] that did not provide for modest payment — modest in quotes — to present pleurals. The defense group was split. Certain of the defense group were adamantly opposed to any sort of payment to present pleural cases. Other of us were in favor of a modest payment to present pleurals although I don't think our view of modest would have been the same as the plaintiffs' view of modest in dollar terms. But that was the theoretical major sticking point in the negotiations.

Q. Was there any difference of view in your opinion as between the plaintiffs we were talking to and the defendants on what would be done with future pleural claims?

A. I think we had agreed in these group negotiations that there would be a line for future cases and cases which fell below that line would not receive cash compensation under the settlement. I don't know if we ever agreed exactly where that line would be drawn. But we clearly had a consensus that there would be a deferral of at least some forms of future cases.

MR. BARON: Your Honor, I'm going to object unless he describes who he had the agreement with. It was unclear.

BY MR. ALDOCK:

Q. Who were the people that you were talking to that were participating in and out, recognizing they weren't all there all the time as representing the plaintiffs Bar?

A. Well, there were certainly Mr. Motley, Mr. Locks in his [Tr. 102] capacity as co-lead counsel, but there — a Mr. Henderson was there. There were numerous plaintiffs' counsel from all over the country at these negotiations. Mr. Sweeney was there. Mr. Gillenwater (ph) from Tennessee was there.

Q. Roughly how many of the major plaintiffs' firms participated at one time or another in these discussions that you're describing?

A. My impression was that a majority certainly of the major asbestos plaintiffs' firms were participating in — participating — I'm sorry — in these discussions.

Q. Were they the — the fact that these discussions going on a secret?

A. No. I mean there is a newspaper for asbestos litigation, a couple of them, and they were reported — the fact that they were going on was reported regularly in these newspapers. What was being discussed was not reported, obviously.

Q. And the consensus that the — scratch the word consensus — the view that you had that we had no difference of opinion with the people we were talking to on the issue of payment of future pleurals, was that one that you had heard any objection to during the discussions that we were having with the people that you've described?

A. No, sir.

Q. Was there a concept —

[Tr. 103] THE COURT: Excuse me. Excuse me, Mr. Aldock. Since you're stuck with me trying to understand what you're doing, I don't have any idea what you and he just — you gave him a leading question which of course counsel was kind enough not to object to, and you came to a conclusion with the witness that I missed somewhere along the line.

BY MR. ALDOCK:

Q. Did any one of the plaintiffs that we were talking to in these groups express a view different than the view you've expressed as the consensus on what would happen with —

A. I don't think that's going to —

Q. — pleural plaintiffs?

A. — help, Mr. Aldock.

THE COURT: I didn't hear any consensus. In fact, I heard him say there was some disagreement as to what would happen as the present pleural cases and future pleural — there was no consensus that I ever heard so I think your question —

MR. ALDOCK: What was the consensus —

THE COURT: — was not well taken.

BY MR. ALDOCK:

Q. What was the consensus on future pleurals as you understood it?

THE COURT: If there was one.

BY MR. ALDOCK:

[Tr. 104] Q. If there was one?

MR. BARON: Your Honor, first of all, it's tremendous hearsay, number one. And number one, we're still not getting as to consensus on what with whom. It's a very unclear question.

THE COURT: I find it very confusing. If you want to pursue this, and if you don't want to pursue it, then go on to another subject. If you want to, you're going to have to start over, so to speak.

MR. ALDOCK: What was —

THE COURT: And find out — I assume whether this gentleman was there and who was there and so forth.

MR. ALDOCK: Yeah.

BY MR. ALDOCK:

Q. You've described the plaintiffs' lawyers who were in attendance. Would you go over those again to make sure we've got them?

A. Well, they varied by — sometimes by meeting, but certainly the lawyers who attended from time to time included Mr. Henderson, Mr. Sweeney from Ohio, Mr. Gillenwater from Tennessee, a Mr. Steinberg from California. There were others, I just can't recall. Mr. Placitello (ph) from New Jersey came occasionally.

Q. As a result of those meetings, when you reported back to the board of the CCR as to what the position of the [Tr. 105] plaintiffs' Bar at those meetings was with respect to pleurals, what did you report?

MR. BARON: Well, can you limit that to time, Counsel. I will object because it's just too general a question.

THE COURT: I don't know the time at this point, either. If it's important, some time after MDL-875 was formed and after the first pretrial order, I don't know.

BY MR. ALDOCK:

Q. Roughly in the first year after the MDL?

A. I think we're talking the fall of 1991 here.

Q. And what did you report back was your view, having attended all these discussions of where the plaintiffs' Bar were on present pleurals and future pleurals?

A. The plaintiffs' Bar on present pleural cases, cases that had been filed up to that point in time, was insisting on a modest payment for such cases in the fall of 1991.

Q. Did they ever define modest? Did we ever get to numbers at that point?

A. No.

Q. All right. Then what was the position on futures?

A. The position of the plaintiffs' Bar on futures, future pleural cases, was that such cases would be deferred and would not receive immediate cash compensation.

Q. Until when?

[Tr. 106] (Pause in proceedings.)

A. Until such time as they actually got impaired from their asbestos exposure.

Q. And there was no agreement at that point in time on what that definition was or where that medical line would be drawn, is that right?

A. All right. The medical issues were not resolved at that point in time in 1991.

THE COURT: Mr. Aldock, I believe I understand it, but the record certainly doesn't have a definition of what present pleural cases are or what a pleural case is. I'm confident I know what it is but the record doesn't have it in there. I don't know what —

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, can you — can you fix that for the record? What is the — by present cases we meant what?

A. Yeah. A present case is a case that has been filed at the point in time that you define present.

Q. Right. And a pleural is what?

A. A pleural case is a case in which the claimant shows signs of asbestos exposure, pleural plaques on his lungs but has no impairment from his exposure to asbestos.

Q. And when we talk about a future pleural, what do we mean in this context?

A. A future pleural is again a claimant who only has signs [Tr. 107] of asbestos exposure but no impairment from that exposure but his claim has not been filed at the point in time that you define future claim. It is something to be filed in the future.

THE COURT: When you talk about impairment, you talk about physical impairment?

THE WITNESS: I think that's right, your Honor. I mean a plaque is —

THE COURT: Functional impairment —

THE WITNESS: Right.

THE COURT: — or lack of volume in the lungs? What are you talking about?

THE WITNESS: I think a plaque had been described as merely a freckle on the lung.

MR. BARON: Your Honor, we object to that very strenuously. He doesn't have the qualifications to give a medical opinion.

THE COURT: We want to know what the conversations were about, that's all we're talking about. Not defining some medical condition forever and ever as a scientific matter. We're talking

about defining terms for purposes of discussions that were going on. So we don't need — I thought his answer was not responsive, but, so I don't — we've all listened to —

MR. ALDOCK: Is it fair —

[Tr. 108] THE COURT: — scores of doctors describing these things. I just want a record made of what he's talking about, that's all.

BY MR. ALDOCK:

Q. Is it fair to say, Mr. Fitzpatrick, that what is functional impairment is a matter that people describe differently and people have different views on?

A. Yes, it is.

Q. And what's your view of a functional impairment?

A. Well, again, I'm not a doctor but my view of functional impairment is an impairment that prevents you from doing something that you could have done previously before you became impaired.

Q. And it's fair to say that other people define impairment with lesser degrees of restriction than what you did and some defined it — some may define it as close to disabling and some may define it as just an impairment, some functional impairment.

MR. WOLFMAN: Your Honor.

Q. There's a difference of view on that.

MR. WOLFMAN: Your Honor, I object. I mean the leading has gotten carried away I think. I mean that was just too much.

THE COURT: Sustained.

BY MR. ALDOCK:

[Tr. 109] Q. Did the concept of traditional, historical averages come up in the course of these discussions with the plaintiffs' Bar?

A. Again, now, we're referring to the discussions with the plaintiffs' Bar that took place in the fall of 191 and involved not only the Center but many asbestos defendants and many members of the plaintiffs' Bar?

Q. That's correct.

A. Yes. The subject of historical averages did come up in those discussions.

Q. And when they talked about — in those meetings about traditional historical averages or sometimes THA, what was generally meant?

A. It was generally meant that a global deal might be possible if the defendants involved in negotiations were willing to pay for certain disease categories what they had previously paid in the tort system or their traditional historical averages.

Q. And did the plaintiffs' have a position on whether the traditional historical average had to include the jurisdiction in which the case was paid?

A. Yes. I think the plaintiffs' Bar felt that it did have to be on a jurisdictional basis.

Q. Did the plaintiffs' Bar have a view that with respect to the future cases it had to have a component of the average of [Tr. 110] the law firm involved?

A. Yes. They felt that — it was felt that they had to include both the jurisdiction and the law firm involved.

Q. Did you ever in the course of discussions in 1991 with the group you've described hear anybody say that it should be on a different basis among the plaintiffs' Bar?

MR. BARON: Your Honor, objection. I think he said —

MR. HENDERSON: It was 1991.

MR. BARON: — it was '91.

MR. HENDERSON: He was talking about.

BY MR. ALDOCK:

Q. 1991, Mr. Fitzpatrick.

THE COURT: It was the fall of 1991. The question's withdrawn. You'll ask it again, please.

BY MR. ALDOCK:

Q. Did you ever in the course of these discussions in 1991 hear anyone suggest from the plaintiffs' Bar that the traditional historical

average should be defined differently than you just stated with regard to jurisdiction and plaintiffs' firm?

A. I did not.

Q. During the settlement process in 1991, what was the role of Judge Weiner?

A. Judge Weiner attempted to encourage these global [Tr. 111] settlement discussions. He would call the defense group together as a group and talk to us. He would also call the plaintiffs' group together and would talk to them separately and then he would ask the two groups to meet.

Q. What efforts did the Judge take to foster settlements during this period that you observed from these meetings?

A. He attempted to get the parties to have a dialogue so that that would foster settlement.

Q. Were there scheduled meetings on a regular or irregular basis involving particular plaintiffs, firms and particular defendants' firms for particular blocks of cases?

A. There were.

Q. How often did that happen?

A. Very frequently.

(Pause in proceedings.)

Q. Did the defendants as a group have occasion at either joint meetings with the Judge or hearings with the Judge or defense meetings with the Judge to express their view of the litigation and where it was going?

A. Sure. I think all of the defendants involved in the MDL process expressed to Judge Weiner the view that they were not going to resolve large blocks of pending inventory which he had asked all of us to do without some sort of commitments for the future.

Q. Was the —

[Tr. 112] THE COURT: Mr. Aldock, we're going to take our noon recess, so to speak.

We'll be in recess till 2:00 o'clock. I don't have any other instructions. We'll be here together at 2:00 o'clock and we'll resume your testimony.

(Witness excused.)

(Luncheon recess taken from 12:47 o'clock p.m. to 2:08 o'clock p.m.)

* * * *

THE COURT: Good afternoon, everyone.

ALL: Good afternoon, your Honor.

THE COURT: Please be seated.

MR. ALDOCK: Your Honor, if I could, I have one preliminary scheduling matter.

THE COURT: I heard you might.

MR. ALDOCK: I'd like to accommodate Dean Kane with her testimony today so she could go back to San Francisco tonight. She'd have to leave here by 4:30.

My own view as a bad estimator, is that I would be roughly 20 minutes with her. Mr. Motley might have another ten, 15, 20 minutes, and Mr. Baron I believe is unlikely to exceed our combined total, and that that would be it.

But my thought would be that I have about 15 more minutes of Mr. Fitzpatrick. I could finish that, we could then, so we're absolutely clear where we are, take Dean Kane [Tr. 113] and then come back for Mr. Fitzpatrick for Mr. Motley's portion of it. I believe that that's acceptable to Mr. Baron.

MR. BARON: Your Honor, I'm happy to work with him. The only thing I would suggest, I didn't realize Mr. Motley was going to have direct of Mr. Fitzpatrick. Could we finish the direct of Mr. Fitzpatrick and then bring in Dean Kane, and I'll do the cross of Mr. Fitzpatrick tomorrow. Would that — just get it all out of the way.

MR. ALDOCK: My only concern is that we not then —

MR. BARON: You just told me you have 15 more minutes with Mr. Fitzpatrick. If we start Dean Kane by 3:00, we'll be out of here.

THE COURT: We'll probably want to take a recess at some point. We still ought to be finished —

MR. BARON: Still ought to be finished.

THE COURT: — by 4:30 —

MR. BARON: Yes.

THE COURT: — with Dean Kane, I would assume. Mr. Aldock, do you have a response to that?

MR. ALDOCK: No, I'm happy to do it either way. My preference would be to do Mr. Fitzpatrick and then Dean Kane so we're 100 percent sure, and then Mr. Motley's portion of Mr. Fitzpatrick. But if your Honor felt that —

THE COURT: First of all —

[Tr. 114] MR. ALDOCK: — that you wanted to have Mr. Motley follow me, that's okay.

THE COURT: Let's get yours finished, and we'll see where we go from there.

MR. ALDOCK: Thank you, your Honor.

THE COURT: You're still on direct, Mr. Fitzpatrick, you're under oath. Please proceed, Mr. Aldock.

LAWRENCE FITZPATRICK, Resumed.

DIRECT EXAMINATION (Continued)

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, I want to pick back up with the negotiations between groups of plaintiffs and groups of defendants lawyers, plaintiffs lawyers and defendants lawyers in late 1991.

Did there come a point in those negotiations in late 1991 where they basically came to a head?

A. Yes. In late 1991, the defense group, the large defense group did make an offer to the group of plaintiffs attorneys. That offer was rejected for a couple of grounds. The offer had contemplated —

MR. BARON: Your Honor, the answer is not being responsive to the question, and I don't think there is a pending — I think he's

answered the pending question, and he's just now giving a speech and —

THE COURT: I think the answer technically might [Tr. 115] have been a yes or no.

MR. BARON: Yes.

THE COURT: And once he did say yes, they did come to a head, maybe you ought —

MR. ALDOCK: Okay. Would you describe —

THE COURT: — to ask another question.

BY MR. ALDOCK:

Q. Would you describe, Mr. Fitzpatrick, in general terms what the defense offer was, and in general terms what the plaintiffs response was?

A. In general terms, the defendants in the group had made a settlement offer. It was basically based on their traditional, historical averages in the tort system. That offer was rejected for basically two reasons.

Number one, it contemplated giving the plaintiffs group a large pot of money, and we were informed by the plaintiffs attorneys that they would have difficulty in determining how to divide up that pot of money.

The second reason stated for the rejection was that plaintiffs attorneys wanted to negotiate their own present cases, and would not give up control of those present cases to any other attorney.

Q. The offer that was made by the defendants was for both present and future?

A. That's correct.

[Tr. 116] Q. Cases?

A. Yes.

MR. BARON: Your Honor, again I'm going to ask him not to lead the —

THE COURT: Sustained. Try not to.

MR. BARON: Thank you.

MR. ALDOCK: They also don't want a yes or no answer. It makes it tricky, but we'll continue to do it this way.

MR. BARON: Well, it's not the answer I've got the problem, it's the question.

THE COURT: Sit down, Mr. Baron. The ruling has been made, don't talk among yourselves.

MR. BARON: Thank you.

THE COURT: Get on with it, Mr. Aldock.

BY MR. ALDOCK:

Q. Mr. Fitzpatrick, the — what was in your mind meant by the idea that with regard to presence, we would negotiate with every plaintiffs lawyer separately? What did they mean by that? How was it going to work?

A. It meant that the defendants would have to go to each and every plaintiffs firm in the United States, and separately negotiate their present claims.

Q. And what was the defendants response to that?

A. The defendants as a group felt that that approach was not [Tr. 117] practical or doable.

Q. When was this that the breakdown of those negotiations occurred?

A. It would have been in late 1991, I think November of 1991.

Q. How did the CCR respond to that breakdown of negotiations?

A. We decided that we wanted to pursue individual global settlement negotiations on behalf of the CCR after the failure of the large group negotiations.

Q. Why did we come to that view?

A. We felt that a global solution was desirable. We had participated in good faith in the larger group discussions. When they failed, we decided to go individually.

Q. How did we implement that desire?

A. We decided to approach Mr. Motley and Mr. Locks who were the co-chairpersons of the plaintiffs, MDL steering committee, and

who had played prominent roles in various national matters for asbestos victims to attempt to negotiate a settlement with them.

Q. Why did we approach Mr. Motley?

A. We approached Mr. Motley because he was one of the co-chairpersons of the MDL steering committee. He had played a prominent role in the Manville bankruptcy and many other bankruptcy proceedings. Had been active in Congress, and [Tr. 118] represented some unions.

Q. Why did we approach Mr. Locks?

A. We approached Mr. Locks because he was the — one of the co-chairpersons of the plaintiffs MDL steering committee. Also had been prominent in national matters on behalf of asbestos victims, such as the Manville bankruptcy, the Unarco bankruptcy was actually the chairman of the Unarco entity that emerged from the bankruptcy, and brought something of a different perspective to the table than Mr. Motley did.

Q. Prior to this time in approaching these people in late 1991, had Ness, Motley and Greitzer and Locks been traditional allies in the tort system in approaches to the national issues that had been the tort system?

MR. BARON: Your Honor, leading. Can we get a question that's not leading. I object —

THE COURT: Counsel, don't — I didn't tell you this. Don't argue any objection unless I ask you to.

MR. BARON: All right. Leading, your Honor.

THE COURT: If the objection is it's leading, objection sustained.

MR. BARON: Thank you.

THE COURT: The next rule of this Court is you don't thank me for making a ruling at any time, please. That applies to all counsel.

BY MR. ALDOCK:

[Tr. 119] Q. Mr. Fitzpatrick, what was the relationship, if any, between Mr. Locks' firm and Mr. Motley's firm in the litigation?

A. I know that Mr. Locks and Mr. Motley knew each other, but I'm not sure that I can answer the question as to what their relationship was.

Q. Did they approach the litigation and the national issues in the same fora and in the same way?

A. No, I think they had different perspectives.

Q. All right. What were they?

A. Well, I think — my perception was that — we perceived Mr. Locks as more perhaps of a businessman than Mr. Motley.

And Mr. Motley as perhaps more of a trial man than Mr. Locks.

Q. When did we approach Mr. Locks?

A. I did not personally do that approach. I believe it was in late 1991.

Q. How about Mr. Motley?

A. Again, it was in late 1991.

Q. Who had made those contacts?

A. I believe that initially, you and I jointly approached Mr. Motley. I believe you initially approached Mr. Locks.

Q. Who then conducted the negotiations that ensued thereafter?

A. The negotiations that ensued thereafter were conducted by — pardon me — on behalf of the CCR, those negotiations were [Tr. 120] conducted by yourself, by Mr. William Hanlon of your firm, and by Mr. Michael Rooney, the chief operating officer of the CCR.

Q. What was your role in those negotiations, if any?

A. The progress of the negotiations were reported to me in my capacity as CCR chief executive officer, and also a member of the board in the CCR. I did not take an active role in the negotiations themselves.

Q. Mr. Fitzpatrick, I now want to cover a few miscellaneous items which I believe are important, but they're not part of the history in any way that we've been covering up to now.

What's a green card?

A. A green card is a contractual agreement between a claimant and his or her counsel and a defendant to basically put a claim in a holding pattern, waive the statute of limitations as a defense, and agree that the claimant can seek compensation if and when that claimant ever gets impaired from his or her exposure to asbestos.

Q. What is the CCR's position on green cards? What has it been historically and what is it now?

A. Well, historically we thought green cards were a good thing, and we tried to dispose of claims from unimpaired people in the tort system through green cards. We were not terribly successful in our green card program.

* * * *

[Tr. 127] Q. What's the difference between a limited release, Mr. Fitzpatrick, and a full release in the litigation?

A. Right. May I start with the full release?

Q. Sure.

Q. A full release is a release of all claims in exchange for some sort of consideration, usually monetary.

A limited release in contrast, typically only releases the disease that the victim is suffering from at the time the release is entered into. For example, a claimant with asbestosis occasionally does a limited release that releases his asbestosis claim in exchange for a sum of money, but allows him to come back in the event he gets lung cancer or mesothelioma.

Q. Which kind of release does the CCR generally provides in the tort system?

A. In the tort system, 90 percent —

Q. While in the — yes, go ahead.

A. I'm sorry. Are we talking the tort system or the Georgine settlement?

A. In the tort system.

Q. All right. In the tort system, since we've been in operation, we've attained approximately 90 percent of our releases have been full releases.

* * * *

[Tr. 130] Because a claimant can go on a registry and not get compensated if he gets ill years later, and the defendant has gone bankrupt in the interim.

Q. Mr. Fitzpatrick, during the four years of the CCR, has there ever been a punitive damage judgment against a CCR company?

A. I would — I would say the CCR is more like five and a half years. But the answer to your question is, there has been no such judgment.

Q. Are there CCR companies that have never been found liable in the tort system in negligence or strict liability, while members of the CCR during that four and a half, five-year period?

A. Yes, sir. Approximately a dozen of our 20 members have never had a judicial determination that they were negligent or liable in strict liability in an asbestos case.

Q. Are you familiar, Mr. Fitzpatrick, with the CCR history of trials and verdicts in the tort system?

A. Yes, sir.

Q. Would you return to Exhibit 217, please?

A. If I may have a moment?

(Pause in proceedings.)

Q. It is the last exhibit I will show you, Mr. Fitzpatrick.

THE COURT: I don't have it. Go ahead.

It's buried in the book somewhere, and I don't want to take [Tr. 131] the time to get it. I have the books, but they're behind me. I thought somebody had gotten me all of them, but apparently I don't.

(Pause in proceedings.)

BY MR. ALDOCK:

Q. Are you familiar with that chart, Mr. Fitzpatrick?

A. I am.

Q. How was it prepared?

A. It was prepared by — at the supervision of Mr. John Gall of the CCR, who is in our legal department.

Q. And you're familiar with what it portrays?

A. Yes, sir.

Q. What is that?

A. It is a list of cases in which the CCR has gone to verdict since the time that the CCR was formed in October of 1988 through January 15th, 1993, which is the effective date of the Georgine stipulation.

Q. Is it all such verdicts?

A. It's all cases that went to verdict during that time period. It does not count cases that may have started and settled before, a verdict was entered.

Q. And would you tell us some of the highlights of what that chart says to you?

A. I think it says a couple of things. There are 197 cases on the chart, 196 of which represents verdicts, one's a [Tr. 132] mistrial in which there was no clear winner.

Of that 196 cases, we the center received defense verdicts in a majority of the cases. We prevailed 107 times, and plaintiffs's verdict were returned 89 times.

So roughly 55 percent of the time defense verdicts were obtained.

Q. Does that count cases where you prevailed for only one member and not for all?

A. No. We only count a victory if it's an outright win for all of our members. In many cases on this list, seven CCR members may have gone to verdict, six of them may have been exonerated, but one may have been found liable. In that case we would count that as a loss even though six of our members were fully exonerated.

We have to win for all for it to be a win in our system on coning.

Q. The last column says, CCR member in the case, and then it has a list of abbreviations for a few companies. Is that the people who actually went to verdict?

A. That's correct.

Q. Is that representative of the number of CCR defendants in the typical cases?

A. No, it's smaller than the average number of CCR defendants in the typical case, because normally in a given case, three or four or five of our members will be disposed

* * * *